United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

77-7187

B

United States Court of Appeals For the Second Circuit

DOCKET NOS. 77-7187; 77-7271, 77-7273

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, in behalf of its membership affected and in behalf of Classes involved herein, GARY MICHAEL, MICHAEL FAGAN and MARTIN F. RANDOLPH, JR., individually and as Class Representatives, and in behalf of all other parties similarly situated and circumstanced,

Plaintiffs,

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, MARTIN F. RANDOLPH, JR., GARY MICHAEL and MICHAEL FAGAN,

Plaintiffs-Appellants,

I. WALTON BADER,

Appellant,

-against-

TELEPROMPTER CORPORATION, TOUCHE ROSS & COMPANY, HERBERT SCHLAFLY, WILLIAM BRESNAN, MARVYN CARTON, "JOHN DOE" and "RICHARD ROE", the names "JOHN DOE" and "RICHARD ROE", being fictitious, the parties intended being those persons, firms, corporations and associations involved in the unlawful acts involved herein,

Defendants,

TOUCHE ROSS & CO.,

Defendant-Appellee.

HARRY LEWIS, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

Consolidated Appeal

UNITED STATES COURT OF APPEALS
FILED
AUG 3 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX
(VOLUME II — Pages 225-965)

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PAGINATION AS IN ORIGINAL COPY

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6861

226

CABLE ADDRESS BAPATENTS NEW YORK
TELEX ITT 424094

LAW OFFICES
BADER AND BADER
274 MADISON AVENUE
NEW YORK, N.Y. 10016

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER

WASHINGTON REPRESENTATIVE
ALBERT M. ZALKIND

Pd

September 27th, 1974

Postal Information
General Post Office
8th Avenue & 33rd Street
New York NY 10001

Gentlemen,

I would appreciate the following information:

1- I believe that at postal station 10016 (delivery address 274 Madison Avenue, New York, N.Y.) there are three postal deliveries at about 8:30 AM, 10:00 AM and 3:00 PM.

2- It would be entirely possible for a letter posted in San Diego California (Via Air Mail) on September 3rd, 1974 to reach 274 Madison Avenue New York NY at the 3PM delivery.

Would you please confirm the above by letter if these facts are correct.

Respectfully,

IWB/ck

I. Walton Bader

PLAINTIFF'S
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

110

UNITED STATES POST OFFICE 227

New York, NY 10001

OUR REF: ADM:CS:C/PH:mo
971-5776

DATE: October 15, 1974

SUBJECT:

P.O. CL:

TO:

Mr. I. Walton Bader
Bader and Bader
274 Madison Avenue
New York, N.Y. 10016

Dear Mr. Bader:

This is with reference to your communication of September 26, 1974 concerning delivery of mail for the above location.

Report received from the Manager, Delivery and Collection indicates that you are scheduled for delivery between 7:45 to 9:30 AM, 10:30 AM to 12:30 PM and 1:15 PM to 2:30 PM.

Concerning the air mail letter deposited in San Diego, Ca. on September 3rd, according to service standards of the US Postal Service the article in question would be probably delivered on September 5th, on the first trip.

I trust this information will be of assistance to you.

Sincerely,

John R. Strachan
Postmaster

By Herman Eisenberg

Complaints Officer

PLTF.

EXHIBIT
U. S. Dist. Court
S. D. of N.Y.

1a

PLAINTIFF'S
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

210

	Overnight	Ov R
Airmail	Designated Cities	Ma 4: wh bo
First-Class	Intra-SCF SCF's Designated locally, and traditional services	Ma 5: co
Parcel Post	As designated locally	5: ma
Surface Preferential	Intra-SCF & SCF's Designated locally incl. Zone 2 (150 miles)	5: ma
Ordinary 2nd & 3rd Class	As developed locally	
Plant Loaded	Delivery schedul	

2nd to 10th day de

UNITED STATES POSTAL SERVICE
SERVICE STANDARDS
(ZIP CODED MAIL ONLY)

	Overnight	Overnight Rcmts.	2nd Day	3rd Day	4th Day	5th Day	6th Day	7th Day	8th Day	9th Day	10th Day
Airmail	Designated Cities	Mail in 4:00 pm white top box colls.	Nationwide contiguous states								
First-Class	Intra-SCF SCF's Designated locally, and traditional services	Mail in 5:00 pm collections	600 miles & Traditional services	Nationwide contiguous states							
Parcel Post	As designated locally	5:00 pm mailings	Up to 150 miles-- Zone 2	300 miles — Zone 3	600 miles — Zone 4	1,000 miles — Zone 5	1,400 mls. — Zone 6	1,800mls. — Zone 7	Over 1,800 mls. — Zone 8		
Surface Preferential	Intra-SCF & SCF's Designated locally incl. Zone 2 (150 miles)	5:00 pm mailings	300 miles — Zone 3	600 miles — Zone 4	1,000 miles — Zone 5	1,400 miles — Zone 6	1,8000 mls — Zone 7	Over 1,800 mls. — Zone 8			
Ordinary 2nd & 3rd Class	As developed locally	—	Intra-SCF (for 5:00 pm carrier presorted mailings)	Designated SCF's and non-presorted intra-SCF	Up to 150 miles -- Zone 2	300 miles — Zone 3	600 miles — Zone 4	1,000mls — Zone 5	1,400 miles — Zone 6	1,800 mls — Zone 7	Over 1,800 mls. — Zone 8
Plant Loaded	Delivery schedules worked out between USPS and mailer										

2nd to 10th day delivery targets cover all of a day's mailings, except as noted.

029 016 730 3 800AX

VALID 10 74 THRU 09 75
WALTON BADER
BADER & BADER
58

Approval Code 2470

Check or Bill No

Service Establishment

Date of Charge 9 7 74

Any delayed charges are entered below

Merchandise/Services

Type of Delayed Chg

Taxes

Amt. of Delayed Chg

Tips/Misc.

Revised Total

Establishment agrees to transmit to American Express Company (Amexco) or Authorized Representative for payment. Merchandise and/or service purchased on this card shall not be resold or returned for cash refund.

Cardmember Signature

X

Total 16 18

Amexco Use Only

Equivalent Amt.

Invoice Number

493738

Amexco Copy

0000,"000000 16 13,"

ROC FORM 20249-REV 1-73 PRINTED IN U.S.A. 5-74

029 016 730 3 800AX

VALID 10 74 THRU 09 75
WALTON BADER
BADER & BADER
58

Approval Code 7714

Check or Bill No. 72409

Service Establishment

Date of Charge 9 10 74

Any delayed charges are entered below

Merchandise/Services

Type of Delayed Chg

Taxes

Amt. of Delayed Chg

Tips/Misc.

Revised Total

Establishment agrees to transmit to American Express Company (Amexco) or Authorized Representative for payment. Merchandise and/or service purchased on this card shall not be resold or returned for cash refund.

Cardmember Signature

X

Total 22 22

Amexco Use Only

Equivalent Amt

Invoice Number

296538

Amexco Copy

0000,"000000 22 26,"

ROC FORM 20249-REV 1-73 PRINTED IN U.S.A. 8-74

31
2223

Mailed

OFFICE COPY

SERVED	
RECEIVED	9/6/74
FILED IN COURT	
D & E	TK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE,
ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

CIVIL ACTION
73 Civil 4133
(RO)

----------x

FURTHER ANSWERS TO FIRST
INTERROGATORIES OF THE DEFENDANT
TOUCHE, ROSS & CO.

The following further Answers are submitted to the First Interrogatories of the Defendant TOUCHE, ROSS & CO. These Answers are alleged on information and belief and are based upon the records kept by the INDEPENDENT INVESTOR PROTECTIVE LEAGUE:

2. State the names and addresses of the members of the IIPL.

Answer: The IIPL keeps a list of its' Members on a set of Index cards. Submitted with the Answers to these Interrogatories, are photocopies of the Index cards showing

the Names and Addresses of the present Members of the IIPL.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

Answer: In addition to the Names and Addresses previously given, the following Name and Address is to be added:

SADIE MOSNER
3133 Brighton 7th Street
Brooklyn, N. Y. 11235

5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by

each such member, and (e) In each instance the name in which the shares were or are held.

Answer: (See below)

NAME OF MEMBER	DATE OF PURCHASE	NO. OF SHARES PURCHASED	PRICE PER SHARE PAID
SADIE MOSNER	Jan.,1973	25	25.00
ROSE L. GROSS	Oct.,1971	8 (now 32)	72.80
"	May 16,1972	33	36.60
"	May 13,1972	50	34.50
G. DIXON MAHON	Jan. 15,1973	900	30.205
ROBERT W. STODDARD	Sept.5,1973	100	8.50
JOHN C. BERNIUS	Aug.10,1973	100	13.50
SYLVIA K. FRENCH	March 24,1972	150	28.50
	Dec. 28,1971	50	28.50
MICHAEL FAGAN	March 10,1972	50	29-7/8
GARY MICHAEL	April 1, 1972	100	30.00
MARTIN F. RANDOLPH, JR.	Feb.,1972	25 (now 100)	140-3/4
	Jan. 8, 1973	100	29-7/8
	Jan. 15, 1973	200	28-3/8
	Feb.,1973	200	24-1/2

NAME OF MEMBER	DATE OF SALE	NO. OF SHARES SOLD	SELLING PRICE
MARTIN F. RANDOLPH, JR.	Aug. 10, 1973	400	13-1/2
	Sept. 5, 1973	400	9-1/2
	Nov. 12, 1973	200	4-3/4
G. DIXON MAHON	Nov. 29, 1973	900	4.125

Dated: September 5, 1974

Yours, etc.

BADER and BADER
Attorneys for the Plaintiffs

TO: ALL OF THE ATTORNEYS AFFECTED BY SAME

By: _____
I. Walton Bader

274 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6860

V E R I F I C A T I O N :

STATE OF: NEW YORK)
) ss.;
COUNTY OF: NEW YORK)

MERRILL SANDS, being duly sworn, deposes and says that he is the Secretary of the Independent Investor Protective League, an Unincorporated Association; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein to be alleged on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE ME
THIS _____DAY OF
SEPTEMBER, 1974.

(S) Merrill Sands
Merrill Sands

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on September 5, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

I. Walton Bader

A

234

Mr. David D. Ackerman
1522 Bryant Ave.
Bronx, N.Y. 10460

Mr. Alan M. Ades
10 West 33 St.
N.Y. N.Y. 10001

N
Mr. Joseph V. Allen
2682 Country Club Blvd.
Cleveland, Ohio 44116

Mr. Ray Alpert
2 Ellwood St.
N.Y. N.Y. 10040

Mrs. Gertrude Andaven
636 Brooklyn Ave.
Brooklyn, N.Y. 11203

Mr. Benjamin Arac
18 Tremont St.
Boston, Mass. 02109

236

Mr. Jack B. Backer
998 East Market St.
Akron, Ohio 44305

Dr. Arthur Baer
919 The Alameda
Berkeley, Calif. 94707

John N. Bancroft JR.
215 Barnwell Ave.
Aiken, South Carolina29801

237

Mrs. Emily Beets
9-07 149th St.
Whitestone, L.I.
N.Y. 11357

M.N. Beitman
1760 Balson Road
Highland Park, ILL. 60035

Mr. Lewis Bellin
Beacon Hotel
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WASHINGTON REPRESENTATIVE
ALBERT M. ZALKIND

September 11th, 1974

Re: Independent Investor Protective League
vs. Teleprompter et. al. Civil Action
73 Civil 4133 R.O.

Hon. Richard Owen
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, N.Y.

Dear Judge Owen,

I am replying to the letter of September 11th, 1974 of the attorneys for the defendant Touche Ross & Company with respect to the filing of answers to interrogatories with respect to Your Honor's Order. I am accused of attempting to mislead the attorneys for this defendant into believing that there had been full compliance with Your Honor's Order. This, of course, is not correct. If there has been any irregularity involved it has been inadvertent and, in any event, there has been no prejudice to the defendant involved.

There is pending, before Your Honor, returnable September 20th, 1974, a motion to extend time for compliance with Your Honor's order to permit me to receive signed copies of the interrogatories of Messrs. Michael and Fagan. The motion involved sets forth all of the relevant circumstances. I expect that, by the time this motion is heard, I shall have received the signed answers to interrogatories.

The facts involved are as follows:

On September 5th, 1974 I had Mr. Merrill Sands, the Secretary of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE sign the answers to interrogatories. I further instructed My

Secretary to send copies of the answers to interrogatories executed by the INDEPENDENT INVESTOR PROTECTIVE LEAGUE to all attorneys for the defendants. I inspected these before they went out, they were properly conformed and there is no question that they were served in time. There does not seem to be any complaint with respect to these answers.

In the afternoon of September 5th, 1974 I had to leave the office for St. Louis Missouri. I prepared, before I left, copies of the answers to interrogatories which I intended to mail and to conform as soon as I returned from St. Louis Missouri.

By inadvertence, on September 5th, 1974 apparently a set of the unconformed answers to interrogatories were sent to the attorneys for TOUCHE ROSS (but were not sent to the other attorneys). Meanwhile I was told on September 5th, 1974 during my absence from the office that the answers to the interrogatories by RANDOLPH had arrived.

On September 6th, 1974 a letter was sent to me by the attorneys for TOUCHE ROSS. I did not personally receive it since I was out of the office. I was told about the receipt of the letter on September 9th, 1974 (but not the contents) and believing that Mr. Eno was referring to the answers of RANDOLPH, FAGAN & MICHAEL I told his office that I hoped to receive the signed copies of those interrogatories and would be mailing them in a few days. I again told his office on September 10th, 1974 that I hoped to receive the signed copies of the original documents in a few days. I point out that I was out of the office in Washington DC on September 9th, St. Louis on September 6th and 7th, and on depositions on September 10th 1974.

I returned to the office on September 10th, 1974 at about 6PM. In the meantime I had told Mr. Eno personally that he could inspect the answers to interrogatories on September 11th, 1974 at 9 AM. As I looked at the file on September 10th, 1974 I saw the envelope to the ROSENMAN COLIN firm missing therefrom and also saw the letters to me of said firm. Now, for the first time, I realized what had happened.

Obviously it was futile to request time extensions in view of the conversation of September 10th with Mr. Eno. I therefore prepared a motion addressed to Your Honor. I also prepared discovery applications etc. This was done between 5AM and 9AM on September 11th

1974.

At 9AM I met with Mr. Nevling and showed him the original answers of INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH. I also gave him a photo-copy of the RANDOLPH answers and he admitted service on the original. I also gave him discovery papers and plaintiff's motion for an extension of time.

At 10:45 I filed all of the papers involved in this Court.

The situation thus is as follows:

a- The answers to the interrogatories, as ordered by the Court, in the case of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH have been filed. There is a Rule 6(d) motion pending for a time extension with respect to MICHAEL and FAGAN.

b- There obviously was no attempt to mislead. The attorneys for the defendants are in communication with one another and, since only one attorney received the papers there obviously was an inadvertence in sending these.

c- There is a pending motion for extension of time for FAGAN and MICHAEL. The Court may either grant or deny it.

d- Even if FAGAN and MICHAEL were eliminated from this case it would make no difference since there are many other League members who can serve as Class Representatives.

The matter seems to be the conventional "tempest in a teapot" or conversely a "red herring". Mr. Eno does not tell the Court that I had offered to grant any extensions of time that he might require in this case until receipt of the answers of FAGAN and MICHAEL. Indeed I have been most generous in granting term extensions. I even have agreed to stay plaintiffs' discovery in this case until the defendants can make a motion directed to the sufficiency of the Complaint. I repeat my offer to grant any necessary term extensions to permit the defendants to study the interrogatory answers as received in order to permit the appropriate motions to be made.

I am prepared to meet with the Court at any convenient time if the Court feels that this is necessary.

IWB/cf
cc All Defendants Attorneys

Respectfully
I. Walton Bader

DEFENDANTS
EXHIBIT
COURT
N.Y.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL., Plaintiffs,	CIVIL ACTION 73 CIVIL 4133 (RO)
-against-	
TELEPROMPTER CORP., ET AL., Defendants.	

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MARTIN F. RANDOLPH, JR.

The Plaintiff MARTIN F. RANDOLPH, JR. submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is 4441-1/2 51st Street, San Diego, California 92115. I am a motel accountant.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that listed in Answer to Interrogatory "6" hereinabove.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase. (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp.:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
February 1972	25 (became 100 shares by reason of subsequent stock split)	140-3/4
January 8, 1973	100	29-7/8
January 15, 1973	200	28-3/8
February, 1973	200	24-1/2

The following sets forth sales information:

Date of Sale	No. of Shares Sold	Selling Price Per Share
August 10, 1973	400	13-1/2
September 5, 1973	400	9-1/2
November 12, 1973	200	4-3/4

I do not have the actual purchase and sales records in my possession at the present time but the above represents my best recollection. The purchases and sales were done through Fahnstock & Company of New York City, and Dean Whitter & Co., Inc. of New York City. I have requested the brokerage records from these firms and will supply these in due course.

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____
I. Walton Bader
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-6860

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: CALIFORNIA)
) ss.:
COUNTY OF:_____)

MARTIN F. RANDOLPH, JR., being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE ME
THIS _____ DAY
OF _____ _, 1974.

_____
Martin F. Randolph, Jr.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify that on _____, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

_____
I. Walton Bader

OFFICE COPY
SERVED
RECEIVED
FILED IN COURT
C & E

D HR

TATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MICHAEL FAGAN

The Plaintiff MICHAEL FAGAN submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is Watson Lane, Danbury, Connecticut 06810. I am a conductor, employed by the Penn Central Railroad.

7. (a) State whether any of Randolph, Michael and

Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that listed above.

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	50	29-7/8

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Pltfs.

By: _____

I. Walton Bader
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-6860

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: CONNECTICUT)
) ss.:
COUNTY OF: _____)

MICHAEL FAGAN, being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE ME

THIS _____DAY OF

_____, 1974.

_____
Michael Fagan

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on _____, 1974, I mailed a copy of the within document to all of the Attorneys for the Defendants.

_____
I. Walton Bader.

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

ETX

30

337

Mailed 9/5

OFFICE COPY

SERVED	9/5
RECEIVED	
FILED IN COURT	
D & E	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, GARY MICHAEL

The Plaintiff GARY MICHAEL submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My address is 100 Chalet Village, Stockbridge, Vermont. I am a law student.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those

Filed 6/[illegible]

set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that set forth hereinabove.

9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth purchase information with respect to my holdings of stock of Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
April 1, 1972	100	30

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____

I. Walton Bader
274 Madison Avenue
New York, N.Y. 10016
Telephone: (212) LE 2-6860

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: VERMONT)
) ss.:
COUNTY OF: _____)

GARY MICHAEL, being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes is to be true.

SWORN TO BEFORE ME

THIS _____ DAY OF

_____, 1974.

_____
Gary Michael

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify under penalties of perjury, that on _____, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

_____
I. Walton Bader.

DOCUMENT
U. S. DIST. COURT
S. D. OF N. Y.

FTX

October 9, 1974

Hon. Richard Owen
Judge, U. S. District Court for the
Southern District of New York
U. S. Courthouse, Foley Square
New York, N. Y. 10007

RE: INDEPENDENT INVESTOR PROTECTIVE LEAGUE
vs. TELEPROMPTER CORP.
73 CIV. 4133 (JUDGE MACMAHON)

Dear Judge Owen:

Mr. Merrill Sands phoned me this morning and told me that it would be impossible for him to voluntarily appear at the Hearing to be held before your Honor, on Friday, October 11, 1974; which was ordered by your Honor to determine the circumstances with respect to the receipt of Answers to Interrogatories of the Plaintiff, Martin F. Randolph, Jr.

Without Mr. Sands' testimony, it is impossible for the undersigned to prove that the Original Interrogatory Answers of Mr. Martin F. Randolph, Jr. were actually received by me on September 5, 1974.

The Court will recall that I was out of the office on the afternoon of September 5, 1974, when the original Answers to Interrogatories of Mr. Martin F. Randolph, Jr. were received in my office.

My Secretary, who works parttime on Tuesdays, Wednesdays and Thursdays from 10:30 A. M. to 3:30 P. M., very seldom, if ever, opens my incoming mail due to her very short working schedule and the fact that

Hon. Richard Owen October 9, 1974

she has a good deal of stenographic work to keep her fully occupied. Also, my Secretary's office is located in the very rear office of the suite of offices here, and the mail is delivered to the front office.

My Secretary typed the original Interrogatories to the Plaintiffs Martin F. Randolph, Jr. et al., and mailed them. She put into the file the copies of the Interrogatories and attached a note to the file indicating that all the copies were to be retained until the original Answers were received, so that the copies could be properly conformed and mailed to all of the attorneys. That is the last that my Secretary saw or heard of this matter.

Mr. Merrill Sands came to my office on September 5, 1974, in the afternoon, when my Secretary had already left.

Under the circumstances, I felt that the most appropriate manner of disposing of this question would be to file a Notice of Voluntary Dismissal against all of the Defendants with respect to the Plaintiff Martin F. Randolph, Jr.

Since Answers or Motions for Summary Judgment have not been made by any of the Defendants, this manner of procedure is appropriate. I believe that the filing of the enclosed Notice of Dismissal moots the Hearing on October 11, 1974.

However, in the event that the Court believes that the Hearing should go forward, it would be necessary for me to obtain compulsory process or the Deposition of Mr. Sands. In addition, since my whereabouts during the period September 5th to September 11th, 1974, are being questioned, I would require the oral testimony of Mr. Edward F. O'Merin, an attorney of Malden, Missouri, who intends

Hon. Richard Owen October 9, 1974

to be in New York during the period of October 22, 1974 to October 25, 1974. It will further be necessary for me to obtain hotel reservation records from the Holiday Inn of Arlington, Virginia, and the hotel in St. Louis at which I stayed. Furthermore, it will be further necessary to obtain airline confirmation of the flights on which I traveled from New York toSt. Louis and to Washington, D. C. Furthermore, the oral testimony of Mr. Norman Nelson, an attorney of Messrs. Milbank, Tweed, Et Al., will be necessary to establish my whereabouts on Tuesday, September 10, 1974.

Under the circumstances, I would respectfully request that, if the Hearing on October 11, 1974 is to go forward, that it be adjourned to Friday, October 25, 1974.

Respectfully,

IWB:db I. Walton Bader

cc: Honorable Richard Owen,
Judge, U.S. Dist. Court
for the Southern Dist. of New York

cc: Messrs. Shea, Gould, Climenko & Kramer
330 Madison Avenue
New York, N. Y. 10017

cc: Messrs. Lawler, Sterling & Kent
500 Fifth Avenue
New York, N. Y. 10036

Hon. Richard Owen

October 9, 1974

cc:
TO: Messrs. Rosenhaus, Markewich
& Friedman, Esqs.
350 Fifth Avenue
New York, N. Y. 10001

Messrs. Rosenman, Colin, Kaye,
Petschek, Freund & Emil, Esqs.
575 Madison Avenue
New York, N. Y. 10022

Phillip Jones, Esq.
845 Third Avenue
New York, N. Y. 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE,
ET AL.,

Plaintiffs,

73 CIV. 4133

JUDGE MACMAHON

v.

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

NOTICE OF VOLUNTARY DISMISSAL PURSUANT
TO RULE 41(a)(1)(i) FRCP

S I R S :

PLEASE TAKE NOTICE that MARTIN F. RANDOLPH, JR., a Plaintiff herein, hereby voluntarily dismisses the above-entitled action, as to him, against all of the Defendants herein.

None of the Defendants have filed either an Answer or a Motion for Summary Judgment in the above-entitled action.

This action continues as a Class Action against all Defendants in behalf of the Plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

Pursuant to Order of JUDGE MACMAHON, this action has been consolidated with other pending actions and PHILIP JONES, ESQ. has been appointed General Counsel for the Plaintiffs in the consolidated actions.

Dated: October 9, 1974

Yours, etc.
BADER and BADER

By: _____
I. Walton Bader
274 Madison Avenue
New York, N.Y. 10016
(212) LE 2-6060
Attorneys for Plaintiff, Martin F. Randolph, Jr.

TO: HON. RICHARD OWEN,
Judge, U. S. District Court
for the Southern District of New York
U. S. Courthouse, Foley Square
New York, N. Y. 10005

Clerk of the Court, U. S. District Court
for the Southern District of New York
U.S. Courthouse, Foley Square
New York, N. Y. 10007

Messrs. Shea, Gould, Climenko & Kramer
Attorneys for Deft., Teleprompter Corp.
330 Madison Avenue
New York, N. Y. 10017

Messrs. Lawler, Sterling & Kent
Attorneys for Deft., Herbert Schlafly
500 Fifth Avenue
New York, N. Y. 10036

6-12

STATES DISTRICT COURT
DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
etc.

Plaintiffs

against

Civil Action
73 Civil 4133 RO

TELEPROMPTER CORP. et. al.

Defendants

SUPPLEMENTAL AFFIDAVIT BY
PLAINTIFF INDEPENDENT
INVESTOR PROTECTIVE LEAGUE

STATE OF NEW YORK
ss:
COUNTY OF PUTNAM

MERRILL R. SANDS, being duly sworn, deposes and says:

I am the Secretary and a Director of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE and am the management representative of the League in charge of this litigation. I am controlling the strategy of this litigation and my attorneys are carrying out my instructions. Indeed the attorney in charge of this case for the plaintiffs is General Counsel of the said INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

At the outset I wish to inform the Court that Mr. Randolph, one of the plaintiffs in this action, first approached me in connection with the issues in this case and it was I who made Mr. Randolph a member of the League.

I further state that the inadvertent mailing of a set of unsigned answers to interrogatories was done by me by inadvertence upon my visit to Mr. Bader's office late in the day of

September 5th,1974. I had, prior to the said mailing, seen the executed answers of Mr. Randolph which had arrived late in the day at Mr. Bader's office and I then assumed that I could send out the copies thereof.

I therefore wish to inform the Court that while the mailing of these copies to the attorneys for Touche Ross & Company was an inadvertence it was my inadvertence and was not due to any fault of Mr. Bader.

I also wish to inform the Court as to the reason for the delay in answering the interrogatories in the first instance.

My investigation of the SEC files indicated that Touche Ross & Company, the defendant herein, had been severely dealt with by the SEC in connection with audits performed for U.S. Financial. I also determined that the SEC had a preliminary investigation in progress with respect to TELEPROMPTER CORPORATION.I was informed by the SEC that, under no circumstances, will investigational files be made available with regard to an investigation in progress by the SEC but, after the conclusion of an investigation, if it results in administrative sanctions or court action, the processes and pleadings involved will become available to the public. Also, if the investigation concludes with some type of voluntary sanctions, it is sometimes possible to obtain the SEC investigational files.

Therefore, in this case, I determined that the League should not go ahead with an active role in this action until the SEC investigation was concluded. The SEC investigation has, in fact, now been concluded and resulted in a consent order against TELEPROMPTER CORPORATION. Discovery can now be had with respect to the manner in which the investigation was conducted and possibly obtain access to the SEC investigative file.

I was subsequently informed by Mr. Bader that he had arranged an "open ended" stipulation with the defendants wherein, so long as the interrogatories were not answered, the defendants would not have to answer or otherwise move with respect to the Complaint.

I now go to the claim, made by the defendant TOUCHE ROSS & COMPANY that the interrogatories, as required to be answered by Court Order, were not properly answered within the time allowed. This is, I submit, utter nonsense.

The records of purchases and sales of TELEPROMPTER stock, as set forth in the records of the League, were fully set forth in the Answers to Interrogatories. The reason why sales were not mentioned with respect to all members other than Randolph is that, insofar as the League is aware, there were no such sales. With respect to the claim that there was not full disclosure of all purchases the records of the League set forth only those purchases given by its members to the League. Thus the answers to interrogatories supplied heretofore represent the total knowledge known to the League and the claim that these answers are inadequate is total nonsense.

The League has also obtained, from the plaintiff RANDOLPH, all of the confirmations of his stock purchases. These are annexed to this affidavit. There is some variance between these confirmations and the information supplied in the answers to interrogatories of RANDOLPH. However the RANDOLPH answers were qualified as constituting his best knowledge at the time these answers were given. If they are inaccurate the defendants are at liberty to make any application to the Court that they so desire.

The League has also received the answers of the plaintiff MICHAEL and these answers have been now filed with the Court and duly served upon the attorneys for all defendants.

WHEREFORE the undersigned prays that the motions made by the defendant TOUCHE ROSS & COMPANY be in all respects denied and the motion for extension of time by the plaintiffs be in all respects granted.

Merrill R. Sands

Merrill R. Sands

Sworn to before me
this 17th day of September 1974.

J. WALTON BADER
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-5140850
Qualified in New York County
Commission Expires March 30, 1976

212 WHITEHALL 3-5200

Fahnestock & Co.

(Established 1881)

110 WALL ST., NEW YORK, N. Y. 10005

OFFICE COPY

CUSIP-NC 879480104

AS BROKERS FOR YOU, OR AS PRINCIPALS WHEN INDICATED BY NUMBER 1 UNDER ◊, WE HAVE MADE THE FOLLOWING TRANSACTION

YOU BOUGHT ◊	YOU SOLD		PRICE	TRADE DATE	SETTLEMENT DATE	ACCT. NO.	TYPE	CM	↑	◊
200		TELCOMPUTER CORP	20 3/8	0115	012273	12 7994	1	90		

SEE REVERSE SIDE

On orders than round lots (100 shares) the charge or credit per share for execution is added to the price on purchases and deducted from the price on sales. Exchange this amount is 12¢ per share. Other charges, if any, are shown or will be provided on request.

PRINCIPAL	INTEREST	STATE TAX		REG. FEE	COMMISSION
5,075.00					65.00

5,760.00

NET AMOUNT *

DR HARTSH P RANDOLPH JR
70 DEER HILL AVE
DANBURY CT 06810

Qty	Trade Date		Settlement Date
100	1/4	2/16/73 Bought	2/21/73
100	1/4	1/18/73 Bought	1/23/73
100	1/4	2/1/73 Bought	2/8/73
100	1/4	2/5/73 Bought	2/12/73
100	1/4	2/26/73 Sold	3/08/73

I made $400 profit on selling the 100 shares I bought at 24½ + 25½ respectively

100	2 1/4	1/15/73 Bought	1/22/73
100	2 1/4	3/15/73 Bought	3/28/73
100	2 1/4	3/22/73 Bought	3/30/73
100	2 1/4	3/26/73 Sold	4/05/73

I made $400 profit on selling the 100 shares I bought at 2¼ at 2½ for a profit of $400. I began the last successful trade I made on telephone on a margin that it was profitably updated for retention. I made a mistake twice in the view of the stock at the time I decided to take an actual loss on the stock because I felt it would come back.

100	2 1/4	4/05/73 Bought	4/11/73
100	2 1/4	4/11/73 Bought	5/01/73
100	2 1/4	4/12/73 Bought	4/17/73
100	2 1/4	4/15/73 Bought	4/18/73
100	2 1/4	4/16/73 Sold	4/19/73

If you have any questions, please call me at 1-714-542-1131 or write me. I will be happy to inform you of a possible change of address.

I have my office
[illegible]

FEB.29,1972

MR MARTIN F RANDOLPH JR
70 DEER HILL AVE
DANBURY CT 06810

IN ACCOUNT WITH

Fahnestock & Co.
(Established 1881)
110 WALL STREET
NEW YORK, N. Y. 10005
TEL. 212 WHITEHALL 3-8900

12 7594 1

TYPE OF ACCOU
1. CASH
2. MARGIN
3. SHORT
4. NON-PURPO
5. SPECIAL SL
6. INCOME
7. SPECIAL BO
8. SPECIAL CO

DATE	QUANTITY BOUGHT OR RECEIVED	QUANTITY SOLD OR DELIVERED	DESCRIPTION	PRICE	AMOUNT DEBIT	AMOUNT CREDIT	BALANCE DEBIT UNLESS MARKED
02-14			CHECK				
02-16	25		TELEPROMPTER CORP	DAN 140 3/4	3,568.34	3,568.34	
							.001
			SECURITY POSITIONS				
	25		TELEPROMPTER CORP				

NOTICE - THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND ALSO FOR INCOME TAX PURPOSES (SEE REVERSE SIDE FOR AGREEMENT ETC.)

BLOCK ENDING	ACCOUNT	R.R.	PAGE
1-31-73 03	44-00137	039	1

LAST STMT.	S.S./I.D. NO.
- -	049-33-7894

6711

MARTIN F RANDOLPH JR
70 DEER HILL AVE
D. BURY CONN. 06810

IN ACCOUNT WITH

F. S. MOSELEY & CO.
ESTABLISHED 1879
50 CONGRESS STREET
BOSTON MASS 02109

20 EXCHANGE PLACE
NEW YORK, N. Y. 10005

209 CHURCH STREET
NEW HAVEN, CONN. 06507

SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND. 46204

AY HAVE RECEIVED CONFIRMATION FOR TRADES
O NOT APPEAR ON YOUR STATEMENT. HOW-
THE SETTLEMENT DATE OF TRADE AS SHOWN
E CONFIRMATION WAS LATER THAN THE DATE
APPEARS AT THE TOP OF YOUR STATEMENT THE
E WILL APPEAR ON YOUR NEXT REGULAR MONTH-
ATEMENT.

E THIS STATEMENT SHOULD BE RETAINED AS IT
TAINS INFORMATION THAT MAY BE NEEDED TO
E YOU TO VERIFY INTEREST CHARGES APPEAR-
N SUBSEQUENT STATEMENTS, AND FOR INCOME
URPOSES.

CHECKS AND COMMUNICATIONS SHOULD BE SENT
E OFFICE SERVICING YOUR ACCOUNT. PLEASE
N ACCOUNT NUMBER SHOWN ABOVE.

EXAMINE AND RETURN IMMEDIATELY IF NOT
CT.

E-ERRORS AND OMISSIONS EXCEP

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AM
0112			OPENING BALANCE CASH ACCOUNT			
			CK RECD	CHK		
0115	100		TELEPROMPTER CORP	29 7/8	3,036.30	
0131			CLOSING BALANCE CASH ACCOUNT			
	100		TELEPROMPTER CORP	POS		
			END OF STATEMENT		**********	

DIV 0.00 INT 0.00 MUN 0.00 YTD DV 0.00 YTD INT 0.00 YTD

STMT. DATE	ACCT.	S.S./I.D. NO.
01-31-73	5461	049-33-7894

MARTIN F RANDOLPH JR
70 DEER HILL AVE
DANBURY CONN 06810

IN ACCOUNT WITH

F. S. MOSELEY & CO.
ESTABLISHED 1879
50 CONGRESS STREET
BOSTON, MASS. 02109

20 EXCHANGE PLACE
NEW YORK, N. Y. 10005

209 CHURCH STREET
NEW HAVEN, CONN. 06507

135 SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND. 46204

0102			OPENING BALANCE CASH ACCOUNT			
0208			CK RECD	CHK		
0208		100	TELEPROMPTER CORP	25 1/2		2,594.[illegible]
0221			CK RECD	CHK		
0222		100	TELEPROMPTER CORP	24 1/2		2,493.[illegible]
0223			CK PAID	CHK		1.[illegible]
0223			CLOSING BALANCE CASH ACCOUNT			
		300	TELEPROMPTER CORP	POS		
			END OF STATEMENT			**********

YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

NOTICE: THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND FOR INCOME TAX PURPOSES.

ALL CHECKS AND COMMUNICATIONS SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT. PLEASE MENTION ACCOUNT NUMBER SHOWN ABOVE.

PLEASE EXAMINE AND RETURN IMMEDIATELY IF NOT CORRECT.

E & OE—ERRORS AND OMISSIONS EXCEPTED.

DIV 0.00 INT 0.00 MUN 0.00 YTD DV 0.00 YTD INT 0.00

EXCHANGE PLACE
N. Y. 10005

209 CHURCH STREET
NEW HAVEN, CONN. 06507

F. S. MOSELEY & CO.

ESTABLISHED 1879
50 CONGRESS STREET
BOSTON, MASS. 02109

135 SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND 46204

BOUGHT	YOU SOLD	
	200	TELEPROMPTER CORP

PRICE	M	C
27 7/8	2	1

CU. 87548510400

PRINCIPAL	INTEREST	COMMISSION	STATE TAX		SEC. FEE	POSTAGE OR HAND.	AMOUNT DUE	TRADE DATE	TRADE NO.
5570.00		84.13	4.50		12		5490.20	04 [illegible]	23

-1 MARTIN F RANDOLPH JR
70 DEER HILL AVE
DANBURY CONN 06810

S-08

ACCOUNT NUMBER	B.S.	SECURITY	
440013.-1-2	BUY	[illegible]	231
045-33-7[illegible]			
IDENTIFICATION NO.			

PAYMENT OF PURCHASE OR SECURITIES SOLD MUST BE RECEIVED BY

ALL CHECKS AND COMMUNICATIONS SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT. PLEASE MENTION ACCOUNT NUMBER SHOWN ABOVE.

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) ON ALL EXCHANGES AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES, ON THE NEW YORK STOCK EXCHANGE INC. THIS AMOUNT IS 12½¢ PER SHARE. IN ALL CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

ACCORDANCE WITH YOUR INSTRUCTIONS WE HAVE THIS DAY MADE THE ABOVE TRANSACTION
YOUR ACCOUNT SUBJECT TO THE AGREEMENT ON THE REVERSE THEREOF.

ACCOUNT	R.R.	PAGE
-30-73 03 44-00137	039	1
2-23-73 5909	S.S./I.D. NO. 049-33-7894	

KTIN F RANDOLPH JR
O DEER HILL AVE
ANBURY CONN 06810

IN ACCOUNT WITH

F. S. MOSELEY & CO.
ESTABLISHED 1879
50 CONGRESS STREET
BOSTON MASS. 02109

20 EXCHANGE PLACE
NEW YORK, N. Y. 10005

209 CHURCH STREET
NEW HAVEN, CONN. 06507

SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND. 46204

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED
0223			OPENING BALANCE CASH ACCOUNT		
0226		100	TELEPROMPTER CORP	IFR	
0308		200	TELEPROMPTER CORP	27 7/8	
0309			CK PAID	CHK	5,484.20
0328	100		TELEPROMPTER CORP	27 3/8	2,784.14
0329			CK RECD AS OF 3/28/73	CHK	
0329			CK RECD AS OF 3/28/73	CHK	
0329			CK RECD AS OF 3/28/73	CHK	
0329			CK RECD AS OF 3/28/73	CHK	
0330			CLOSING BALANCE CASH ACCOUNT		
	100		TELEPROMPTER CORP	POS	
			END OF STATEMENT		**********

DIV 0.00 INT 0.00 MUN 0.00 YTD DV 0.00 YTD INT 0.00 YTD

MAY HAVE RECEIVED CONFIRMATION FOR TRADES DO NOT APPEAR ON YOUR STATEMENT. HOW- THE SETTLEMENT DATE OF TRADE AS SHOWN E CONFIRMATION WAS LATER THAN THE DATE PEARS AT THE TOP OF YOUR STATEMENT THE E WILL APPEAR ON YOUR NEXT REGULAR MONTH- TATEMENT.

E THIS STATEMENT SHOULD BE RETAINED AS IT S INFORMATION THAT MAY BE NEEDED TO LE YOU TO VERIFY INTEREST CHARGES APPEAR- N SUBSEQUENT STATEMENTS, AND FOR INCOME RPOSES.

CHECKS AND COMMUNICATIONS SHOULD BE SENT E OFFICE SERVICING YOUR ACCOUNT. PLEASE TION ACCOUNT NUMBER SHOWN ABOVE.

EXAMINE AND RETURN IMMEDIATELY IF NOT T.

ERRORS AND OMISSIONS EXCEPTED.

70 OLD HILL AVE
DANBURY CT 06810

[illegible]
110 WALL STREET
NEW YORK, N. Y. 10005
TEL. 212 WHITEHALL 3-6900

2. [illegible]
3. [illegible]
4. [illegible]
5. SPECIAL [illegible]
6. INCOME
7. SPECIAL BO
8. SPECIAL CO

DATE	QUANTITY LONGS OR CREDITS	QUANTITY SHORTS OR DEBITS	DESCRIPTION	PRICE	AMOUNT DEBIT	AMOUNT CREDIT	BALANCE DEBIT UNLESS MARKED
03-26			CHECK	DAN		2,150.00	
03-30	100		TELEPROMPTER CORP	C24 7/8	2,531.84		381.84
			SECURITY POSITIONS				
	100		TELEPROMPTER CORP				

NOTICE: THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND ALSO FOR INCOME TAX PURPOSES (SEE REVERSE SIDE FOR AGREEMENT, ETC.)

DANELLY CT 481

110 WALL STREET
NEW YORK, N. Y. 10005
TEL 212 WHITEHALL 3-8900

DATE	QUANTITY BOUGHT OR RECEIVED	QUANTITY SOLD OR DELIVERED	DESCRIPTION	PRICE	AMOUNT DEBIT	AMOUNT CREDIT	BALANCE DEBIT UNLESS MAR
			BALANCE FWD MAR.30,1973				381
03-3			CHECK	CAN			
04-.5		10	TELEPROMPTER CORP	C26 7/8		151.42	
04-.6			CHECK	CAN		2,638.00	
04-11	100		TELEPROMPTER CORP	C24 1/4	2,468.53	63.00	
04-16			MCH2.TO APR16 9%	INT	.51		
			AVG CR BAL 16 DAYS 331.36				
			CLOSING INT BAL 82.05CR				
			SECURITY POSITIONS				1
	100		TELEPROMPTER CORP				

NOTICE: THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND ALSO FOR INCOME TAX PURPOSES (SEE REVERSE SIDE FOR AGREEMENT, ETC.)

323

2 WHITEHALL 3-6900

CUSIP-NC 879483104

Fahnestock & Co.

(Established 1881)

110 WALL ST., NEW YORK, N. Y. 10005

ROKERS FOR YOU, OR AS PRINCIPALS WHEN INDICATED BY NUMBER 1 UNDER ♦, WE HAVE MADE THE FOLLOWING TRANSACTION:

RIGHT ♦	YOU SOLD		PRICE	TRADE DATE (MO DAY)	SETTLEMENT DATE (MO DAY YR)	ACCOUNT NO.	TYPE	CU	↑ ♦
100		TELEPROMPTER CORP	24 1/4	0404	041173	12 7554	2	50	2

SEE REVERSE SIDE.

On other than round lots (normally 100 shares) on all exchanges an amount has been added to the price on purchases or deducted on sales. On the New York Stock Exchange this amount is 12½¢ per share. In all other cases an explanation will be provided on request.

AMOUNT	INTEREST	STATE TAX		REG. FEE	COMMISSION
2,425.00					43.53

2,468.53

NET AMOUNT *

MR MARTIN F RANDOLPH JR
71 DEER HILL AVE
DANBURY CT 06810

...LY RETURN ATTACHED COPY 2 WITH YOUR REMITTANCE AND/OR SECURITIES SOLD (IF NOT IN YOUR ACCOUNT) ON OR BEFORE DUE DATE.

330

WHITEHALL 3-5900

CUSIP-NO 879483104

Fahnestock & Co.

(Established 1881)

110 WALL ST., NEW YORK, N. Y. 10005

OKERS FOR YOU, OR AS PRINCIPALS WHEN INDICATED BY NUMBER 1 UNDER ◆, WE HAVE MADE THE FOLLOWING TRANSACTION:

BOUGHT	YOU SOLD		PRICE	MO DAY	MO DAY YR	ACCOUNT NO.	TYPE	CM	↑ ◆
		TELEPROMPTER CORP	20 1/4	0501 (TRADE DATE)	05 07 7 (SETTLEMENT DATE)	12 7554	2	50	2

SEE REVERSE SIDE.

On other than round lots (normally 100 shares) on all exchanges an amount has been added to the price on purchases or deducted on sales. On the New York Stock Exchange this amount is 12½¢ per share. In all other cases an explanation will be provided on request.

AMOUNT	INTEREST	STATE TAX		REG. FEE	COMMISSION
9,[illegible]					118.92

9,212.92

NET AMOUNT *

MR MARTIN F RANDOLPH JR
7 DEER HILL AVE
DANBURY CT 06810

031

LY RETURN ATTACHED COPY 2 WITH YOUR REMITTANCE AND/OR SECURITIES SOLD (IF NOT IN YOUR ACCOUNT) ON OR BEFORE DUE DATE.

WE CONFIRM THE FOLLOWING TRANSACTION SUBJECT TO THE AGREEMENT ON THE REVERSE SIDE HEREOF.

DEAN WITTER & CO

MEMBER NEW YORK STOCK EXCHANGE INC.

YOU BOUGHT	YOU SOLD
	400

SECURITY NO	REFERENCE NO.
879180104	25036810

YOUR ACCOUNT NUMBER	AE
76 11733 1	53

TRADE DATE	031073
DATE DUE	031773

ALL INSTRUCTIONS, INQUIRIES, ETC. SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT.

DESCRIPTION

TELEPROMPTER CORP
DUPLICATE

MR MARTIN F RANDOLPH
70 DEER HILL AVE
DANBURY CONN 06810

PRICE	AMOUNT
13 1/2	540000
INTEREST	9160
COMM./CHG.	1500
STATE TAX	11
REG. FEE	
MISCELL.	
I. & P.	
CDN TAX	
DUE YOU	529029

AMOUNT ▷

WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS.

832

WE CONFIRM THE FOLLOWING TRANSACTION SUBJECT TO THE AGREEMENT ON THE REVERSE SIDE HEREOF.

DEAN WITTER & CO.
INCORPORATED

MEMBER-NEW YORK STOCK EXCHANGE, INC.

BOUGHT	YOU SOLD
	200
SECURITY NO	REFERENCE NO.
74 [illegible]106	31/05878
YOUR ACCOUNT NUMBER	A E
7E 11733	1 56 M
TRADE DATE	111273
DATE DUE	111973

ALL INSTRUCTIONS, INQUIRIES, ETC. SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT.

DESCRIPTION

TELEPROMPTER CORP

MR MARTIN F RANDOLPH
70 DEER HILL AVE
DANBURY CONN 06810

PRICE	AMOUNT
4 3/4	95000
INTEREST	
COMM./CHG.	3453
STATE TAX	250
REG. FEE	02
MISCELL.	
I.&P.	
CDN TAX	
AMOUNT ▷ DUE YOU	91250

WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS.

833

WE CONFIRM THE FOLLOWING TRANSACTION SUBJECT TO THE AGREEMENT ON THE REVERSE SIDE HEREOF:

DEWAY WITTER & CO.
INCORPORATED

MEMBER-NEW YORK STOCK EXCHANGE, INC.

YOU BOUGHT	YOU SOLD
	400
SECURITY NO.	REFERENCE NO.
879433104	24802389
YOUR ACCOUNT NUMBER	A.E.
76 11733 1	58 M
TRADE DATE	090573
DATE DUE	091273

ALL INSTRUCTIONS, INQUIRIES, ETC. SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT.

DESCRIPTION

TELEPROMPTER CORP

MR MARTIN F RANDOLPH
70 DEER HILL AVE
DANBURY CONN 06810

PRICE	AMOUNT
9 1/4	370000
INTEREST	
COMM./CHG.	7900
STATE TAX	1000
REG. FEE	08
MISCELL.	
I.&P.	
CDN TAX	
AMOUNT DUE YOU	361062

WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS.

DEFENDANT'S
EXHIBIT
U. S. DISTRICT COURT
S. D. OF N. Y.

HR

To L. E.

Date 9/9 Time 9:15 A.M. P.M.

WHILE YOU WERE OUT

M Mr. Eadie

of

Phone
Area Code Number Extension

TELEPHONED	✓	PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
	RETURNED YOUR CALL		

Message Rec'd your letter about Fletcher Case. Will send typed draft copies of original

AD 8 Operator

(over)

DEFENDANT'S
EXHIBIT
... COURT
... N.Y.

ENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

SAMUEL I. ROSENMAN
1896-1973

MURRAY HILL 8-7300
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

MURRAY C. ...
WILLIAM W. GOLUB
SAMUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOETZ
SAMUEL H. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
HAL L. BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINI
JOSEPH ZUCKERMAN

BY HAND

September 9, 1974

I. Walton Bader, Esq.,
Bader & Bader,
274 Madison Avenue,
New York, New York 10016

Re: Independent Investor Protective League et al.
v. Teleprompter et al.

Dear Mr. Bader:

We today received a telephone message from you in response to my letters of September 6 and 7 in which you say that you will send us copies of the original Interrogatory answers "within the next few days." This is unsatisfactory to us. Mr. Nevling is prepared to come to your office immediately to inspect the originals, if they have not already been filed. If that opportunity is not afforded by the end of today or the originals are not filed by the end of today pursuant to Rule 6(c) of the General Rules of the Court, we shall assume that you do not have the originals, and did not have them on September 5, 1974, and shall proceed accordingly.

Yours very truly,

LRE/LMW

cc: All Counsel

From ~~LAWRENCE KENNEDY~~ 9/10
9:25 A.M

To LRE

Mr. Bader called. Re Interrogatories. He will be sending photo copies of the original answers. He extends his apologies. He will extend your time to answer for 2 1/2 or three weeks.

MK

JTD

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. N. Y.

K TD

340

ENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
MAX FREUND
SYDNEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSINY
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
WILLIAM M. SOLUD
MANUEL MARCELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOETZ
SAMUEL M. LINDENBAUM
GILBERT S. EDELSON
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LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MALL BARASCH
H. PAUL BUHAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. KADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMA
1886-1973

MURRAY HILL 8-78
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYOR
TELEX 12-5745

September 6, 1974

I. Walton Bader, Esq.,
Bader & Bader,
274 Madison Avenue,
New York, New York 10016

Re: Independent Investor Protective League et
v. Teleprompter et al.

Dear Mr. Bader:

We today received in the mail, under postmark of September 5, 1974, what purport to be answers to Touche Ross' interrogatories by plaintiffs. Would you please advise whether the original answers have been filed in court as required by Rule 6(c) of the General Rules of the Court. If not, we request that the originals be filed immediately.

The copies of the purported answers we received are incomplete in the following respects:

Michael Fagan. Nothing indicates whether you as attorney signed the answers or whether Mr. Fagan individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in Connecticut is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Fagan signed the answers (b) whether Mr. Fagan swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

I. Walton Bader, Esq. September 6, 1974

Martin F. Randolph, Jr. Nothing indicates whether you as attorney signed the answers or whether Mr. Randolph individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in California is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Randolph signed the answers, (b) whether Mr. R ndolph swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

Gary Michael. Nothing indicates whether you as attorney signed the answers or whether Mr. Michael individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in Vermont is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Michael signed the answers, (b) whether Mr. Michael swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

IIPL. While there is an indication that Mr. Sands swore to these answers, there is nothing to indicate whether you did so, or when Mr. Sands swore to the answers or the name of the notary before whom he did so. Would you please therefore supply this information.

The foregoing does not relate to any substantive objections that we may have to the answers but simply to the question of whether the answers were properly executed by the plaintiffs, if they were executed at all.

Yours very truly,

Lawrence R. Eno

LAWRENCE R. ENO

LRE/SGS

cc: All Counsel

COPY

RCKPF&E

The person mailing or delivering this letter must fill out the following:
DATE 9/7 1974
MAILED BY LRE
DELIVERED BY
AT A.M. P.M.
There must be no exception to this rule.

September 7, 1974

I. Walton Bader, Esq.
Bader & Bader
274 Madison Avenue
New York, New York 10016

Re: Independent Investor Protective League et al. v. Teleprompter et al.

Dear Mr. Bader:

In my letter of September 6, 1974, there is an error on page 2 insofar as IIPL is concerned. The inquiry respecting you should be whether you signed the answers rather than swore to them.

Yours very truly,

LAWRENCE R. ENO

LRE/rn

92310-018

DEPENDENTS

S. D. OF N. Y.

LTD

TYPE CARRIER TRIP	ROUTE NO. 14		
LAST NAME LaPorta	INITIALS	DATE 9/5	DPP 6
SOCIAL SECURITY NO. 085-05-1058		PAY LOC. 543	DES/ACT. 13

TYPE ACTION	TRANS CODE	TIME (Hour & Hundreds)	OPERATION NO.
BT		0593	718
MV		0784	717
MV		0939	718
MV		1058	[illegible]
OL		1218	718
IL		1259	718
MV		1318	717
MV		1413	718
BI		1450	718

SIGNATURE OF SUPERVISOR [signature] | O/T HRS. AUTH.

PS Form 1260
Mar. 1971

NON TRANSACTER CARD

119

INSTRUCTIONS

Record in chronological order the employees action, operation number, and time as performed during his tour. Supervisors must check the form, verifying all entries to be correct, and must sign the form. If any overtime is authorized, supervisor must indicate number of hours in appropriate box. At the end of the day this form must be submitted to the Main Office via the last dispatch leaving the station. If leave action is required, enter the type of leave (SL, AL, etc.) and the number of hours. The start time for leave will be shown in the TIME column.

GPO 46- 79440-1 353-544

6th day worked in a row Day Pattern

OYEE NAME	SOC. SEC.	D/A	ROUTE	OPP	BT	TIME BS	RS	ET	HOURS OFFICE	STREET	TOTAL
N	TF115091655	13-4	16012	717	0593	0773	1423	1439	3.37	4.59	7.96
			16012						7.18	8.79	15.97
RDINA	G 057263471	13-4	16013	717	0594	1023	1208	1443	2.29	1.85	4.14
AUGHLIN	JT063056550	13-4	16013	717	0591	0779	1429	1439	5.35	2.73	8.0[illegible]
EHY	JJ075164107	13-4	16013	717	0591	0779	1431	1436	3.93	4.13	8.06
TZ	E 099222396	13-4	16013	717	0593	0779	1424	1434	3.66	4.35	8.01
NSON	HM419404941	13-4	16013	717	0103	0779	0948	0948	.73	1.69	2.42
			16013						15.96	14.75	30.71
M	GS055125438	13-4	16014	717	0611	0784	1414	1451	4.22	3.76	7.9[illegible]
CHRIST	W 075388552	13-4	16014	717	0708	0784	1164	1211	2.40	2.63	5.03
PORTA	VJ085051058	13-4	16014	SEQ. ERR-HRS NOT COMPUTED-SEE S.E.D.							
TINGS	P 116108201	13-4	16014	717	0593	0784	1414	1446	4.07	4.06	8.13
			16014						10.69	10.45	21.14
IS	P 223260620	13-4	16015	SEQ. ERR-HRS NOT COMPUTED-SEE S.E.D.							
ELL	T 242544366	13-4	16015	717	0639	0784	0944	1444	1.40	1.60	3.00
NEGRY	D 243442473	13-4	16015	718	0604			1453	4.56		4.55
TE	MF246682574	13-4	16015	SEQ. ERR-HRS NOT COMPUTED-SEE S.E.D.							
			16015						5.96	1.60	7.56
FO	PA084187674	13-4	16016	717	0594	0768	1411	1441	5.44	2.65	8.09
RLMEIER	JF097245291	13-4	16016	717	0606	0768	1454	1454	3.11	5.05	8.16
EZ	O 130405281	13-4	16016	717	0599	0768	1468	1468	3.15	4.95	8.10
			16016						11.70	12.65	24.35
ON	JR060382726	13-4	16017	717	0598	0774	1218	1443	4.69	3.41	8.10
RUDEN	DM153305692	13-4	16017	717	0104	0773	0948	0948	1.42	1.75	3.17
ILLA	C 581582762	13-4	16017	717	0591	1056	1468	1468	5.18	3.02	8.20
			16017						11.29	8.18	19.47
RTINEZ	W 058420786	13-4	16018	717	0589	0754	1416	1439	3.62	4.38	8.00
ILLA	L 072128463	13-4	16018	717	0589	0754	1414	1438	3.67	4.36	8.03
EMBERG	FS119244712	13-4	16018	717	0106	0754	0949	0949	.58	1.95	2.53
VIS	R 422708846	13-4	16018	718	0601	1024	1463	1463	2.28	3.29	5.57
			16018						10.15	13.98	24.13
RTENSTEIN	N 055464799	13-4	16019	718	0600			1441	.20		.20
IZALES	E 076347290	13-4	16019	717	0598	0764	1449	1449	3.07	4.95	8.02
EDMAN	P 104160737	13-4	16019	717	0594	0764	0999	0999	1.70	2.35	4.05
CK	M 112059159	13-4	16019	SEQ. ERR-HRS NOT COMPUTED-SEE S.E.D.							
			16019						4.97	7.30	12.27
NNEY	LJ070141493	13-4	16020	717	0603	0768	1428	1446	2.50	5.45	7.95
NA	LD118144954	13-4	16020	717	0094	0768	0949	0949	.62	1.81	2.43
			16020						3.12	7.26	10.38
CHOLEDA	JF062261384	13-4	16021	717	0601	0763	1443	1443	2.29	6.13	8.42
SS	S 081011006	13-4	16021	717	0593	0763	1429	1441	3.86	4.19	8.05
DSPEE	JA581488937	13-4	16021	717	0596	0856	1271	1441	4.30	4.15	8.45
			16021						10.45	14.47	24.93
LLIN	I 050147795	13-4	16022	723	0589	0813	1099	1441	5.21	2.86	8.07
TION	D 051381575	13-4	16022	723	0598	1258	1449	1449	6.29	1.91	8.21
			16022						11.50	4.77	16.27
SELLA	J 084463645	13-4	16023	724	0598			1443	8.40		8.40
LECIO	JH103341452	13-4	16023	723	0591	0901	1114	1448	6.07	2.13	8.20
			16023						14.47	2.13	16.60
LLER	S 075402580	13-4	16024	723	0596	0826	1246	1443	4.22	4.20	8.42

DEFENDANT'S EXHIBIT M

DEFS
EXHIBIT
U.S. Dist. Court
S.D.N.Y.
N TR

316

COPY

RCKPF&E

The person mailing or delivering this letter must fill out the following:
DATE 9/10/1974
MAILED BY
DELIVERED BY James C
AT A.M. P.M.
There must be no exception to this rule.

BY HAND

September 10, 1974

I. Walton Bader, Esq.
Bader and Bader
274 Madison Avenue
New York, New York 10016

Re: Independent Investor Protective League
v. Teleprompter

Dear Mr. Bader:

This will confirm your statement to me that at 9:00 A.M. tomorrow in your office you will exhibit to Mr. Nevling of our office the originals of the purported further answers of plaintiffs Martin F. Randolph, Jr., Gary Michael and Michael Fagan, as well as the original further answers of IIPL.

Please be further advised that we are requesting Judge Owen to conduct an immediate investigation into the matter of these answers if the originals are not exhibited to us at that time and place.

Very truly yours,

LRE/mk

Lawrence R. Eno

cc: All Counsel

423,C-C15

DEFENDANT'S
EXHIBIT
Court
0 12

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL
575 MADISON AVENUE NEW YORK, N.Y. 10022

SYDNEY H. ROSENMAN
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD P. ROSINY
ANDROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE R. END
MURRAY COHEN
WILLIAM W. GOLUB
MANUEL MARWELL
ANDREW J. SCHOEN
JACK E. BROWNSTON
ASA D. SOKOLOW
MAURICE H. GUETZ
SAMUEL H. LINDENBAUM
GILBERT S. FIDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. HUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
HALL BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMAN
1896-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

September 11, 1974

Hon. Richard Owen
United States Courthouse
Foley Square
New York, New York

Re: Independent Investor Protective League
v. Teleprompter
73 Civ. 4133 (RO)

Dear Judge Owen:

We feel compelled to bring the following circumstances to the attention of the Court:

On August 16, 1974, your Honor directed plaintiffs to serve within 20 days (i.e., by September 5, 1974) further answers to Interrogatories dated November 1, 1973 propounded by defendant Touche Ross & Co. ("Touche Ross").

On September 6, 1974, we received in the mail, under postmark of September 5, 1974, copies of what purported to be further answers by the individual plaintiffs. Copies thereof are annexed hereto. As is readily apparent, there is nothing to show that those further answers of Messrs. Randolph, Michael and Fagan were ever executed by them. Although those further answers were purportedly executed in California, Vermont and Connecticut, the respective counties do not appear in the jurats; there is no indication that the further answers were ever signed or sworn to; no date on which the further answers were allegedly sworn to appears; and no notary names or stamps appear.

Accordingly, on September 6 and 7, 1974, we wrote to I. Walton Bader, Esq.*requesting that the originals of the further answers be promptly filed pursuant to Rule 6(c) of the General Rules of this Court -- which requires such filing within 2 days of service -- and requesting that the missing information be supplied. Copies of those letters are attached.

Early on the morning of September 9, 1974, my office received a message from Mr. Bader to the effect that photocopies of the originals would be mailed to us "within the next few days." I immediately sent to Mr. Bader by hand a letter stating that unless the originals were filed by the close of the day September 9 or we were permitted to inspect the originals by the close of that day, we would have to assume that Mr. Bader did not have the originals and that he did not have the originals on September 5, when he purported to send us copies thereof. A copy of that letter is annexed hereto.

The originals were not filed by the end of the day September 9 nor were we permitted to inspect them by the end of that day.

On September 10, 1974, we received another cryptic message from Mr. Bader to the effect that we could inspect the originals sometime in the future. I then called Mr. Bader's office and was told that he was not available. Shortly after leaving word that unless Mr. Bader called me promptly I intended to communicate with the Court, Mr. Bader returned my call. I told Mr. Bader that unless we were permitted to inspect the originals that day, September 10, we intended to communicate with the Court on the subject. Mr. Bader assured me that he had the originals but that he did not know where the originals were in his office and that he might have left them at home. Mr. Bader finally said that he would exhibit the originals at 9:00 A.M. on September 11, 1974 in his office to Mr.

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*plaintiffs' counsel

Nevling of our firm. I sent a confirming letter by hand on September 10 to Mr. Bader, copy of which letter is enclosed.

Mr. Nevling appeared at Mr. Bader's office this morning. Mr. Bader then exhibited original further answers executed by Mr. Randolph. Mr. Bader told Mr. Nevling that he had not received executed further answers from either Mr. Michael or Mr. Fagan. It thus appears that in the cases of those two plaintiffs what Mr. Bader sent us on September 5 were drafts of proposed further answers by those plaintiffs and that they were sent to us in an effort to mislead us, and other counsel, into believing that those plaintiffs had made timely responses to the Interrogatories as ordered by the Court on August 16, 1974.

We are bringing these extraordinary circumstances to the prompt attention of the Court since your Honor has general supervision of the conduct of this case.

Respectfully yours,

Lawrence R. Eno

Lawrence R. Eno

LRE/mk
enclosures

cc: I. Walton Bader, Esq. (by hand)
All Counsel

* * * *

[The attachments to the letter from Lawrence R. Eno to Judge Owen dated September 11, 1974 (Exhibit O) are not reproduced here. Other copies of those attachments appear elsewhere in the Appendix, as follows:

Further Answers to First Interrogatories of the Defendant Touche, Ross & Co. (Exhibit A)	pp. 229-233
Further Answers to the First Interrogatories of the Defendant, Touche, Ross & Company, by Plaintiff, Martin F. Randolph, Jr. (Exhibit C)	pp. 300-303
Further Answers to the First Interrogatories of the Defendant, Touche, Ross & Company, by Plaintiff, Michael Fagan (Exhibit D)	pp. 304-306
Further Answers to the First Interrogatories of the Defendant, Touche, Ross & Company, by Plaintiff, Gary Michael (Exhibit E)	pp. 307-309
Letters from Lawrence R. Eno to I. Walton Bader dated September 6, 1974 and September 7, 1974 (Exhibit K)	pp. 340-342
Letter from Lawrence R. Eno to I. Walton Bader dated September 9, 1974 (Exhibit I)	pp. 337
Letter from Lawrence R. Eno to I. Walton Bader dated September 10, 1974 (Exhibit N)	p. 346].

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL
575 MADISON AVENUE NEW YORK, N.Y. 10022

SAMUEL I. ROSENMAN
1896-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

WILLIAM W. GOLUB
MARVIN E. MARWELL
ANDREW J. SCHOEN
JAMES F. BRIDGETON
ALAN G. HOFFLOW
MAURICE H. GOETZ
SANFORD H. LINDENBAUM
GILBERT S. EDELSON
ANTHONY J. GOTH
GEORGE J. GORDON
LAWRENCE H. DUTTENWIESER
EUGENE L. VOGEL
GERALD WEPIN
MALE L. GARASCH
H. PAUL DURAP
EDWARD H. COHEN
FLORA SCHNALL
PETER F. HADEL
LEE H. ROBINSON
FRANK N. ROSINY
JOSEPH ZUCKERMAN

September 13, 1974

Hon. Richard Owen
United States Courthouse
Foley Square
New York, New York

Re: Independent Investor Protective
League v. Teleprompter
73 Civil 4133 (RO)

Dear Judge Owen:

We today received in the mail copy of a letter to your Honor dated September 11, 1974 on the subject of my letter of September 11, 1974 to the Court.

Since we will present to the Court in sworn affidavits the facts relating to this episode, I will not burden the Court with a detailed response to Mr. Bader's letter. That letter, however, contains a number of misstatements which I feel obliged to correct promptly:

1. Mr. Bader did not tell my office on September 9, 1974 that he "hoped to receive signed copies" of any interrogatories and "would be mailing them in a few days."

2. Mr. Bader did not tell my office on September 10, 1974 that he "hoped to receive the signed copies of the original documents in a few days."

Indeed, when I personally spoke to Mr. Bader on

September 10, 1974, he assured me that he had the original signed answers of all the plaintiffs and he said "you can take my word for it." He did not qualify that statement in any way. I nevertheless insisted on seeing the originals.

There are other misstatements of Mr. Bader that will be treated in our affidavits. I, however, wished promptly to correct the impression sought to be created by Mr. Bader that this matter is a "conventional 'tempest in a teapot' or conversely a 'red herring.'" On the contrary, we believe it is a serious violation of the standards of practice in this Court.

Respectfully yours,

Lawrence R. Eno

Lawrence R. Eno

LRE/mk

cc: I. Walton Bader, Esq. (by hand)
All Counsel

Φ ~~10~~

Mon. Sept 1, 1974

Incoming	Outgoing
Mr. Opalule	Mr. Baker (LEG-6560)
Mr. Baker - LEG not available (10:37 A.M.	Mr. John Murphy (203) 688-1911
Mr. Spannier 3:30	Mr. Hallinan 581-3600
	Mr. Fairchild (312) 786-56

Tuesday, 3/5/62

Incoming

The Boder
Front Roaring here
Eleanor - bookkeeping
The Hibbian
The Sterman here
Arnold Rath
The Goleh.
Stanley Hinard
The Goleh.
Jay Schwartz
The Boder's secretary
The Boder
Julius Lamy (Postmaster)
The Kaufman
The Rickeby here
The Decker
The Dalibian
The Fennelly.

Outgoing

The Spanier 755-9460
The Boder's secretary
The Rickeby
The Dalibian (spoke w/ Jay)
Hymen Rosenblatt -

DEPARTMENT
OF
JUSTICE
RTD

S-67 TC

Ros

REUND & EMIL

355
DEFENDANT'S
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
S 10

MEMORANDUM

Date September 20 1974

To FILE

Touche Ross

From L. R. ENO

IIPL v. Teleprompter

92310-018

On the argument today of a motion before Judge Owen, Bader said that he left his office on September 5 at about 3:00 P.M. He said that Sands was with him at the time, and that he told Sands that if the answers of the other plaintiffs came in he should mail out the copies. He said that after that Randolph's answer came in and Sands inadvertently mailed out copies of all the answers instead of just Randolph's.

Judge Owen pointed out that this was not in conformity with Sands' affidavit, in which he made no mention of any discussion with Bader about the answers and in which he said he came to the office in the late afternoon and "assumed" that he could send the copies of the answers when he found Randolph's answer.

Judge Owen then asked Bader when Randolph's answer was received. Bader said it came in the 3 o'clock mail on September 5.

Judge Owen then asked Bader when he knew that the copies had been sent, of which he did not have the originals. Bader said that this is a question that he has been contemplating, and

does not know exactly, but he did know it at the time he had his conversation with me. His conversation with me was on September 10 at about 12:30 P.M. It is to be noted that in his letter to the Court on September 11 he told the Court that he had not understood what had happened until he got into his office at 6 P.M. on September 10.

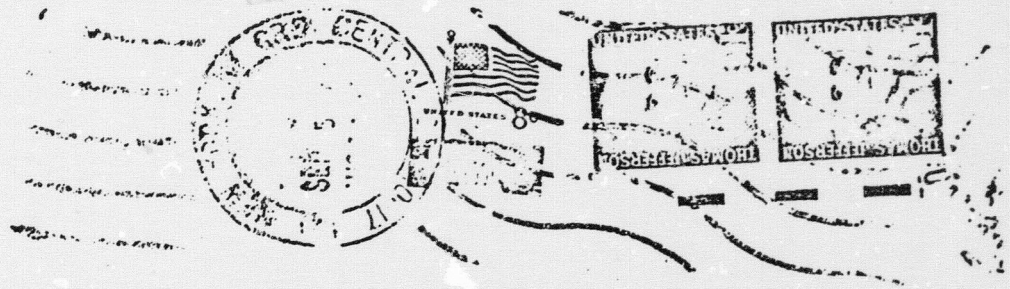
It is to be noted that not only does Sands not state he had a discussion about mailing the copies on September 5, but in Bader's letter to the Court on September 11 he makes no reference to any conversation with Sands. He does not mention Sands' name as the person who mailed the copies and indicates that some unknown person in his office mailed the copies.

Also on the argument before Judge Owen, Bader said that for a long time he did not know who had mailed the copies, but blamed his secretary. He said his secretary denied that she had done so, and that it was only some time after that that he found that Sands had mailed them. In this connection he approached the bench and showed the Judge some note attached to his file, which he indicated was a note from his secretary. The Judge told Bader to keep that note on his file. I did not look at the note. In any event, this statement to the Court was completely inconsistent with his other statement to the Court that he told Sands on September 5 that if the answers came in that day he was to mail out the copies.

337

DEFENDANT'S
EXHIBIT
U. S. Dist. Court
S. D. of N. Y.

T 12



MESSRS. ROSENMAN COLIN KAYE ET AL.

575 MADISON AVENUE

NEW YORK, N. Y. 10022

MS continue

— Have did you hear Randolph answers?

Barry said to Sands on first S:
"If answer comes in wait
you to send answers out"

Randolph comes — the 3rd week

Have on get that
Sands said

→ Did answer get of mortgage

CIV 4133
COURT
EXHIBIT
U. S. Dist. Court
S. D. of N.Y.
5/10

1 Encouraged of time — demos

2. Dem pressure 1 Fagan
2 Michael

~~(by Hunt) in IIPL~~ +
~~Randolph's Daughter~~
~~by Dunn / Time~~

3. 4) Take testimony on Sands "making
re Randolph

5) Pressure on IIPL

6) Costs of motion

Can I dem. vs IIPL Seamen
wards are ~~pressure~~ prand.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, in behalf of its membership affected and in behalf of the Classes involved herein, GARY MICHAEL, MICHAEL FAGAN and MARTIN F.RANDOLPH,Jr. individually and as Class Representatives, and in behalf of all other parties similarly situated and circumstanced

Plaintiffs

against

TELEPROMPTER CORP. TOUCHE, ROSS & COMPANY, HERBERT SCHLAFLY, WILLIAM BRESNAN, MARVYN CARTON, "JOHN DOE" and "RICHARD ROE", the names "JOHN DOE" and "RICHARD ROE" being ficticious, the parties intended being those persons, firms, corporations and associations involved in the unlawful acts set forth herein, and SECURITIES AND EXCHANGE COMMISSION.

Defendants

CIVIL ACTION
73 Civil

CLASS ACTION

JURY TRIAL DEMANDED

COMPLAINT

COUNT ONE

FIRST: Plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE is an unincorported membership organization of investors, having an office and place of business at 19 West 24th Street, New York, N.Y.

SECOND: Plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE is a non-profit voluntary association whose purpose is the protection on investors from predatory practices.

THIRD: Plaintiffs MARTIN F. RANDOLPH,JR.,GARY MICHAEL and MICHAEL FAGAN and citizens and residents of the State of Connecticut and are stockholders in the defendant TELEPROMPTER CORP.

FOURTH: Plaintiffs MARTIN F. RANDOLPH, JR., GARY MICHAEL and MICHAEL FAGAN have been stockholders in the said TELEPROMPTER CORP. for a long time last past.

FIFTH: Plaintiff MARTIN F. RANDOLPH, JR. purchased 200 shares of the said defendant TELEPROMPTER CORP. in February 1972 for a price of 9 1/4 per share and purchased 400 shares of the said defendant TELEPROMPTER CORP. on May 1, 1973 at a price of 20 1/4 per share. Said plaintiff has also sold shares in the said defendant TELEPROMPTER CORP. during the period commencing February 1972.

SIXTH: Defendant TELEPROMPTER CORP. is, on information and belief, a foreign corporation having a principal place of business at 50 West 44th Street, New York, N.Y.

SEVENTH: Defendant TOUCHE ROSS & COMPANY, is, on information and belief, a partnership having an office and place of business at 1633 Broadway, New York, N.Y.

EIGHTH: Defendants HERBERT SCHLAFLY, WILLIAM BRESNAN and MARVYN CARTON are, on information and belief, officers, directors, or persons in control of the defendant TELEPROMPTER CORP. who have participated in the unlawful acts involved herein and are thus personally liable therefor.

NINTH: This Court acquires jurisdiction of this Count pursuant to the Securities Acts of the United States, and, in particular, but without limitation as to other sections, 15 USC 771, 15 USC 77m, 17 USC 77o, 15 USC 77p, 15 USC 77q, 15 USC 77v, 15 USC 78i, 15 USC 78j, 15 USC 78p, 15 USC 78r, 15 USC 78t, and 15 USC 78aa.

TENTH: On information and belief, in violation of

of the applicable Securities Act provisions, the defendants, jointly and severally, engaged in the following practices from the period commencing February 1972.

a- The defendant TOUCHE ROSS & COMPANY certified financial statements of the defendant TELEPROMPTER CORP. which statements were false, misleading, and were not in accordance with the fact.

b- The defendant TOUCHE ROSS & COMPANY failed to disclose to the stockholders of the said TELEPROMPTER CORP. a myriad of financial irregularities in the operation of the said corporation TELEPROMPTER CORP. which irregularities have been rumored to amount to as much as Fifty Million ($50,000,000) Dollars.

c- The defendant TELEPROMPTER CORP. has been guilty of widespread financial irregularities, there has been misappropriation of corporate funds by corporate officers.

d- The defendant TELEPROMPTER CORP. has been guilty of widespread fraud in its construction program.

ELEVENTH: As a result of the above information, which has been widely reported in the press, the Securities and Exchange Commission has conducted an investigation into the affairs of the said TELEPROMPTER CORP. and has suspended trading in the securities of said corporation.

TWELFTH: The Securities and Exchange Commission is made a party to this Complaint so that the information in the possession of said Commission can be made available to the plaintiffs herein and the plaintiffs can have their say in any administrative proceeding brought by said Securities and Exchange Commission for the protection

of investors. There is obviously no claim for damages brought against the said SECURITIES AND EXCHANGE COMMISSION, which is a Governmental Agency charged with the protection of investors.

THIRTEENTH: As a result of the above the value of the stock of the said TELEPROMPTER CORP. has been substantially reduced and the plaintiffs, and the Classes that they represent, have been substantially damaged.

FOURTEENTH: This is a Class Action suit and the following set forth the required Class Action allegations.

1- The Class involved are the stockholders of TELEPROMPTER CORP. and the plaintiffs GARY MICHAEL, MICHAEL FAGAN and MARTIN F. RANDOLPH Jr. are members of said Class.

2- The Class is also limited to stockholders who purchased and sold stock at the time of the unlawful acts alleged herein and who suffered losses thereby.

3- The Class is believed to consist of about One Hundred Thousand (100,000) persons, firms, corporations and/or associations.

4- The Class is too numerous to be individually joined in this action.

5- This Class Action suit is brought under Rule 23(a), Rule 23(b)(1)(B) and Rule 23(b)(3) of the Federal Rules of Civil Proceedure.

6- The representative parties are competent to represent the Class. One of the parties, the INDEPENDENT INVESTOR PROTECTIVE LEAGUE is a voluntary association of investors having

no "ax to grind" making said organization a superior Class Representative.

7-The INDEPENDENT INVESTOR PROTECTIVE LEAGUE has members thereof who are members of the Class involved.

COUNT TWO

FIFTEENTH: Plaintiffs repeat and re-allege the allegations set forth in paragraphs "FIRST","SECOND","THIRD","FOURTH","FIFTH", "SIXTH","SEVENTH","EIGHTH","NINTH","ELEVENTH","TWELFTH","FOURTEENTH" of the foregoing Complaint as though fully set forth at length herein.

SIXTEENTH: This is a suit specifically for manipulation of security prices in violation of Rule 10b-5 of the Rules of the Securities and Exchange Commission.

SEVENTEENTH: On information and belief, during the period commencing on February 1972 the defendants herein manipulated the prices of the stock of TELEPROMPTER CORP. so that the said stock had a ficticious value which was not in accord with its true value.

EIGHTEENTH: As a result thereof the plaintiffs and the members of the plaintiffs' Class lost considerable sums of money while the defendants were unjustly enriched thereby.

COUNT THREE

NINETEENTH: This Count is brought against the defendants solely by the plaintiffs GARY MICHAEL, MICHAEL FAGAN and MARTIN F. RANDOLPH, Jr.

TWENTIETH: This Court obtains jurisdiction of this Count pursuant to the diversity of citizenship of the parties hereto.

TWENTY-FIRST: This Court also obtains jurisdiction of this Count under the provisions of "Pendent Jurisdiction" this being a substantial and related claim to the Counts of this Complaint for Securities Act violations.

TWENTY-SECOND: The amount in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand ($10,000) Dollars.

TWENTY-THIRD: This is a stockholders derivate suit and, pursuant to Rule 23.1 FRCP the following allegations are made.

1- The plaintiffs GARY MICHAEL, MICHAEL FAGAN and MARTIN F. RANDOLPH, Jr., or at least one of them, were stockholders of the defendant TELEPROMPTER CORP. at the time of the transactions of which the plaintiffs complain.

2- This action is not a collusive one to grant jurisdiction to this Court that it otherwise would not have.

3- The attempts to obtain redress from the officers and directors of the defendant TELEPROMPTER CORP. to obtain redress would be futile in this case since the said officers and directors are, on information and belief, in many cases parties to the unlawful acts alleged.

TWENTY-FOURTH: On information and belief, as reported in the public press, there have been misappropriation of corporate funds in connection with the operations of the said TELEPROMPTER CORP. since February 1972 and there have been widespread irregularit

in connection with the construction program of the said defendant TELEPROMPTER CORP.

TWENTY-FIFTH: There have been further rumors that, by reason of the above, the said TELEPROMPTER CORP. is in danger of going into bankruptcy.

TWENTY-SIXTH: The Securities and Exchange Commission has suspended trading in the stock of the said TELEPROMPTER CORP. and the value of said stock has dramatically declinded prior to the aforesaid suspension of trading.

TWENTY-SEVENTH: There has also been a substantial decline in the value of said stock since February 1972.

TWENTY-EIGHTH: By reason of the acts set forth above the said TELEPROMPTER CORP. has suffered substantial damage.

VERIFICATION OF COUNT THREE

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

I. WALTON BADER, being duly sworn, deposes and says that he is one of the attorneys for the plaintiffs herein; that he has read the foregoing "Count Three" and knows the contents thereof, that the same is true on information and belief as alleged therein.

Deponent further says that the reason that this verificatic is made by deponent and not by one of the plaintiffs is that all plaintiffs do not reside in the county wherein the undersigned has his office.

I. Walton Bader

Sworn to before me

this 26th day of September 1973

Anne V. Kelly

ANNE V. KELLY
Notary Public, State of New York
No. 03 2075515
Qualified in Suffolk County
Commission Expires March 30, 1975

COUNT FOUR

TWENTY-NINTH: Plaintiff repeats and re-alleges the allegations set forth in paragraphs "FIRST", "SECOND","THIRD","FOURTH", "FIFTH","SIXTH","SEVENTH","EIGHTH","TENTH","ELEVENTH","THIRTEENTH", "FOURTEENTH","SIXTEENTH","SEVENTEENTH","EIGHTEENTH","TWENTY-FIRST", "TWENTY-SECOND",and "TWENTY-FOURTH" of the foregoing Complaint as though fully set forth at length herein.

THIRTIETH: This is a common-law suit for damages by reason of the acts alleged herein.

WHEREFORE PLAINTIFFS DEMAND:

1- Damages against the defendants, jointly and severally, in behalf of the Class involved, in the sum of Fifty Million ($50,000,000) Dollars together with the costs and disbursements of this action, upon "Count One" of the Complaint.

2- Damages against the defendants, jointly and severally, in the sum of Fifty Million ($50,000,000) Dollars together with the costs and disbursements of this action on "Count Two" of the Complaint.

3- Damages against the defendants, jointly and severally, in the sum of Fifty Million ($50,000,000) Dollars together with the costs and disbursements of this action on "Count Three" of the Complaint.

4- Damages against the defendants, jointly and severally, in behalf of the Classes involved, on "Count Four" of the Complaint.

I. WALTON BADER
General Counsel
INDEPENDENT INVESTOR PROTECTIVE
LEAGUE

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York, N.Y. 10016
Telephone (212) LE-2-6860

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, in behalf of its membership affected and in behalf of the Classes involved herein, GARY MICHAEL, MICHAEL FAGAN and MARTIN F. RANDOLPH, JR., individually and as Class Representatives, and in behalf of all other parties similarly situated and circumstanced,

Plaintiffs,

-against-

TELEPROMPTER CORPORATION, TOUCHE, ROSS & COMPANY, HERBERT SCHLAFLY, WILLIAM BRESNAN, MARVYN CARTON, "JOHN DOE" and "RICHARD ROE", the names "JOHN DOE" and "RICHARD ROE" being fictitious, the parties intended being those persons, firms, corporations and associations involved in the unlawful acts set forth herein, and SECURITIES AND EXCHANGE COMMISSION,

Defendants.

CIVIL ACTION
73 CIV 4133
JUDGE GRIESA

CLASS ACTION

JURY TRIAL
DEMANDED

INTERROGATORIES TO DEFENDANT,
TOUCHE, ROSS & COMPANY (FIRST SET)

The following interrogatories are propounded to the Defendant, TOUCHE, ROSS & COMPANY, to be answered fully and completely, under oath, pursuant to Rule 33 of the Federal Rules of Civil Procedure, within thirty days subsequent to the date of service of this demand.

The interrogatories are as follows:

1. State your Name, residence address and position with the Defendant, TOUCHE, ROSS & COMPANY.

2. State the full and correct Name of the Defendant, TOUCHE, ROSS & COMPANY.

3. Set forth the Names and residence addresses of all partners of TOUCHE, ROSS & COMPANY.

4. Set forth the time period that Defendant TOUCHE, ROSS & COMPANY performed accounting services for the Defendant TELEPROMPTER CORPORATION.

5. Set forth the time period that Defendant TOUCHE, ROSS & COMPANY performed accounting services for any subsidiary of the Defendant TELEPROMPTER CORPORATION and identify the subsidiary involved.

6. State to the knowledge of the Defendant TOUCHE, ROSS & COMPANY whether any other accounting firm performed accounting services for the Defendant TELEPROMPTER CORPORATION and, in such event, identify the accounting firm involved and the accounting services performed.

7. State, in detail, all of the accounting services performed by the Defendant, TOUCHE, ROSS & COMPANY for the Defendant TELEPROMPTER CORPORATION and any of its' subsidiaries during the period from 1968 to 1973.

8. Set forth, in detail, a listing of all financial statements certified by the Defendant TOUCHE, ROSS & COMPANY for the Defendant TELEPROMPTER CORPORATION and/or any of its' subsidiaries during the period from 1963 to 1973.

9. If copies of the aforesaid financial statements so certified by the Defendant TOUCHE, ROSS & COMPANY as set forth in Interrogatory Number "8" are in the possession of the Defendant TOUCHE, ROSS & COMPANY, please annex copies hereto.

10. State whether the Defendant, TOUCHE, ROSS & COMPANY performed accounting services for the Defendant TELEPROMPTER CORPORATION or any of its' subsidiaries with respect to (a) The Oakland Franchise, (b) The Tacoma Franchise, (c) Construction costs with respect to cables laid, (d) payroll expenses (e) contributions.

11. If the answer to Interrogatory Number "10" is in the affirmative, please detail the accounting services so performed and annex copies of any financial information obtained with respect thereto.

12. Did TOUCHE, ROSS & COMPANY obtain any information, during the course of its' performance of accounting services for the Defendant TELEPROMPTER CORPORATION or any of its' subsidiaries that indicated any of the following:

a. Failure to record cancellations of service by customers.

b. Fictitious employees.

c. Fictitious records of the actual extent of cable laid.

d. Contributions to political figures.

e. Any other contributions.

f. Entries made in violation of normal accounting practices.

13. If the answer to interrogatory "12" is in the affirmative, please state what steps were taken by the Deferdant TOUCHE, ROSS & COMPANY with respect to any of the matters involved.

14. State whether the Defendant TOUCHE, ROSS & COMPANY has had any correspondence with respect to any investigation of the Defendant TELEPROMPTER CORPORATION by any Governmental agency. If so, please annex copies of all such correspondence.

15. State whether the Defendant TOUCHE, ROSS & COMPANY has been called upon to testify with respect to any investigation by any Governmental Agency of the affairs of TELEPROMPTER CORPORATION or any of its' subsidiaries including, but not limited to, the SECURITIES AND EXCHANGE COMMISSION and the FEDERAL COMMUNICATION COMMISSION.

16. If the answer to Interrogatory "15" is in the affirmative, please inform the Plaintiffs of (1) the Name and residence address of the person so testifying on behalf of TOUCHE, ROSS & COMPANY, (2) the nature of his testimony, (3) where a transcript of such testimony may be obtained, (4) whether a transcript of such testimony is in the possession of the Defendant TOUCHE, ROSS & COMPANY.

17. Set forth the Names and residence addresses of all persons connected with the Defendant, TOUCHE ROSS & COMPANY who performed any accounting services for the Defendant TELEPROMPTER CORPORATION or any of its' subsidiaries.

18. In connection with each person identified in the answer to Interrogatory "17" state:

1. The dates during which accounting services were performed by said person.

2. The nature of the accounting services so performed.

3. The Corporation for whom said services were performed.

19. State whether, in connection with accounting services rendered by the Defendant TOUCHE, ROSS & COMPANY for the Defendant TELEPROMPTER CORPORATION or any of its' subsidiaries, any written reports were rendered. If so, please inform the Plaintiffs where such reports can be inspected.

20. State whether the Defendant TOUCHE, ROSS & COMPANY certified financial information in any annual reports, 10K reports, 10Q reports or any other report given to stockholders, creditors or government agencies.

21. If the answer to interrogatory "20" is in the affirmative, please identify the reports and annex copies hereto.

DATED: NEW YORK, N.Y.
OCTOBER 31, 1973

Yours, etc.

By: _____ I. Walton Bader

BADER and BADER,
Attorneys for Plaintiffs
274 Madison Avenue
New York, N.Y. 10016
(212) LE 2-6860.

TO: Office of the General Counsel
Securities and Exchange Commission
Washington, D. C. 20549

TO: Messrs. Shea, Gould, Climenko
and Kramer
Attorneys for Deft., TELEPROMPTER CORPORATION
330 Madison Avenue
New York, N.Y. 10017

Messrs. Rosenman, Colin, Kaye,
Petschek, Freund & Emil
Attorneys for Deft., TOUCHE, ROSS & COMPANY
575 Madison Avenue
New York, N.Y.

Messrs. Lawler, Sterling & Kent
Attorneys for Deft., HERBERT J. SCHLAFLY
500 Fifth Avenue
New York, N.Y. 10036

CERTIFICATE OF SERVICE

I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certifies that he mailed a copy of the within document to each of the above attorneys by depositing a copy of same in the mailchute maintained at 274 Madison Avenue, New York, N.Y.; on WEDNESDAY, OCTOBER 31, 1973.

I. Walton Bader.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al., Plaintiffs, -against- TELEPROMPTER CORP., et al., Defendants.	Civil Action 73 Civil 4133 (TPG) NOTICE OF DEPOSITION

S I R S :

PLEASE TAKE NOTICE that, pursuant to the Federal Rules of Civil Procedure, defendant Touche, Ross & Co. will take depositions upon oral examination before an officer authorized by law to administer oaths, at the offices of Rosenman Colin Kaye Petschek Freund & Emil, Esqs., 575 Madison Avenue, New York, New York 10022, as follows:

1. Of plaintiff Independent Investor Protective League, 19 West 24th Street, New York, New York, by an officer, director, managing agent, member or other person having knowledge of the facts, at 10:00 A.M. on December 13, 1973.

2. Of plaintiff Martin F. Randolph, Jr. at 10:00 A.M. on December 20, 1973.

3. Of plaintiff Gary Michael at 10:00 A.M. on January 3, 1974.

4. Of plaintiff Michael Fagan at 10:00 A.M. on January 10, 1974.

Each deposition will continue from day to day until completed. You are invited to attend and cross examine.

Dated: New York, New York
November 1, 1973

Yours, etc.,

ROSENMAN COLIN.KAYE PETSCHEK FREUND & EMIL

By Lawrence R. Ries
A Member of the Firm

Attorneys for defendant Touche, Ross & Co.
575 Madison Avenue
New York, New York 10022
MU 8-7800

TO:

BADER & BADER, ESQS.
Attorneys for plaintiffs
274 Madison Avenue
New York, New York 10016

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for defendant Teleprompter Corp.
330 Madison Avenue
New York, New York 10017

LAWLER, STERLING & KENT, ESQS.
Attorneys for defendant Herbert Schlafly
500 Fifth Avenue
New York, New York 10036

OFFICE OF THE GENERAL COUNSEL
Securities and Exchange Commission
Washington, D.C. 20549

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al., Plaintiffs,	Civil Action 73 Civil 4133 (TPG)
-against-	INTERROGATORIES
TELEPROMPTER CORP., et al., Defendants.	

- -x

INTERROGATORIES TO PLAINTIFFS
(FIRST SET)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendant Touche, Ross & Co., by its attorneys, Rosenman Colin Kaye Petschek Freund & Emil, hereby propounds the following Interrogatories to plaintiffs, to be answered within thirty (30) days after service hereof, under oath and in writing, by each of the individual plaintiffs and by plaintiff Independent Investor Protective League by an officer or duly authorized agent thereof.

The Interrogatories are as follows:

1. State (a) (i) the date when and (ii) the place where Independent Investor Protective League ("IIPL") was organized, (b) whether there are any articles of association or similar documents of IIPL, and if so (c) all of the places where the same may be found.

2. State the names and addresses of the members of IIPL.

3. State (a) the names and addresses of the (i) offi-

cers, (ii) executives, and (iii) employees of IIPL, and (b) the positions occupied by each of them.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per

share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

11. (a) State whether IIPL at any time owned any shares of Teleprompter, and if so, state (b) (i) the date when it furst purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (c) (i) the date of each subsequent purchase by it of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (d) (i) the date of each sale by it of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (e) the number of shares of Teleprompter presently owned by it, and (f) in each instance the name in which the shares were or are held.

Dated: New York, New York
November 1, 1973

Yours, etc.,

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

By Lawrence R. Eno
A Member of the Firm

Attorneys for defendant Touche, Ross & Co.
575 Madison Avenue
New York, New York 10022
MU 8-7800

TO:

BADER & BADER, ESQS.
Attorneys for plaintiffs
274 Madison Avenue
New York, New York 10016

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for defendant Teleprompter Corp.
330 Madison Avenue
New York, New York 10017

LAWLER, STERLING & KENT, ESQS.
Attorneys for defendant Herbert Schlafly
500 Fifth Avenue
New York, New York 10036

OFFICE OF THE GENERAL COUNSEL
Securities and Exchange Commission
Washington, D.C. 20549

November 3rd, 1973

Re: Independent Investor Protective League
vs. Telprompter Corp. et. al.
Civil Action 73 Civil 4133 TPG

Hon. Thomas P. Griesa
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York NY 10007

Dear Judge Griesa,

I have received a Notice of Taking Testimony and a set of interrogatories from the attorneys for Touche Ross & Company (one of the defendants) and would appreciate a conference with the Court for the purpose of discussing motions against these documents.

I would like to vacate the Notice of Taking Testimony insofar as it calls for the depositions of GARY MICHAEL and MICHAEL FAGAN on the ground that the plaintiffs need only have one stockholder to commence litigation. Therefore the defendants should be entitled to take the deposition of only one stockholder. Mr. Randolph is the most knowledgeable of the stockholders and therefore it is his deposition that should be taken.

I would like to vacate the interrogatories numbered "2" (6) insofar as it calls for occupations. The members of the Independent Investor Protective League who do not own stock in Teleprompter are irrelevant to the issues of this suit. The occupations of the suing stockholders are likewise irrelevant.

May I ask that the conference involved be set as soon as possible.

Respectfully,

cc: Defendants' Attorneys

November 9, 1973

Hon. Thomas P. Griesa
United States Courthouse
Foley Square
New York, N. Y. 10007

Re: Independent Investor Protective
League v. Teleprompter Corp. et al.
Civil Action 73 Civil 4133 (TPG)

Dear Judge Griesa:

We are the attorneys for Touche, Ross & Co., one of the defendants in the above-entitled action. We have received notice of a conference to be held with the Court on November 26, 1973.

We would appreciate it if there were included among the subjects to be discussed at that conference a motion that we propose to make to dismiss the complaint and a motion to extend the time to answer or object to plaintiffs' interrogatories until the motion to dismiss is decided.

Respectfully yours,

LRE:mei

cc: Bader & Bader, Esqs.
Shea, Gould, Climenko &
Kramer, Esqs.
Lawler, Sterling & Kent, Esqs.
Securities & Exchange Commission

Index No. _____ Year 19 73

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc., et al., etc.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL., ETC., ET AL.,

Defendants.

COMPLAINT

BADER AND BADER
Attorneys for Plaintiff
Office and Post Office Address, Telephone
274 Madison Avenue
Borough of Manhattan New York, N. Y. 10016
LExington 2-6860

DISTRICT COURT FILED DEC 13 1973 S. D. OF N. Y.

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

© 1960—EXCELSIOR-LEGAL STATIONERY CO., INC. 62 WHITE ST., N. Y.

Defendants having moved orally at a pre-trial hearing this date, to dismiss the complaint for legal insufficiency, the motion is granted, subject to the following conditions. Plaintiffs are given until December 27, 1973 to serve an amended complaint complying with the rules of pleading (particularly Rule 9(b) of the F.R.C.P.) in pleading a sufficient statement of the wrongs alleged. On consent, the action is dismissed as to the S.E.C. without leave to replead.

So ordered.
12/11/73

Thomas F. Gribba
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
JAN 4 9 38 AM '74
S.D. OF N.Y.

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, an unincorporated membership association, in behalf of its membership affected, MARTIN F. RANDOLPH, Jr. and MICHAEL FAGAN, indibidually, said parties suing in their own behalf and in behalf of the Classes involved herein similarly situated and circumstanced.

Plaintiffs

against

TELEPROMPTER CORP., TOUCHE, ROSS & COMPANY, HERBERT SCHLAFLY, WILLIAM BRESNAN, MARVYN CARTON, "JOHN DOE" and "RICHARD ROE", the names "JOHN DOE" and "RICHARD ROE" being ficticious, the parties intended being those persons, firms, corporations, and associations involved in the unlawful acts involved herein.

Defendants

73 CIVIL 4133
TPG

AMENDED COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION

COUNT ONE

FIRST: Plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE is an unincorporated membership organization whose purpose is to protect the rights of security holders. It is a non-profit organization and has its office and place of business at 19 West 24th Street, New York, N.Y.

SECOND: The following sets forth a list of the members of the said INDEPENDENT INVESTOR PROTECTIVE LEAGUE who are adversely affected by the acts involved in this Complaint.

NAME OF MEMBER	ADDRESS
G. DIXON MAHON	Drawer 949 Ozona Texas
ROSE L. GROSS	New York, N.Y.

NAME OF MEMBER	ADDRESS
MARTIN F. RANDOLPH, Jr.	70 Deer Hill Avenue Danbury Conn.
GARY MICHAEL	Danbury Conn.
MICHAEL FAGAN	Danbury Conn.
ROBERT W. STODDARD	108 Cherry Avenue West Sayville, L.I.
JOHN C. BERNIUS	116 Lincoln Avenue Sayville L.I.
SYLVIA K. FRENCH	1100 Park Avenue New York, N.Y.

THIRD: There may be other members of the said INDEPENDENT INVESTOR PROTECTIVE LEAGUE involved in the acts set forth in this Complaint. Said additional members will be brought to the attention of the defendants prior to the trial of this action.

FOURTH: The following table sets forth the transactions made by the members of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE in TELEPROMPTER CORP stock.

DATE OF TRANSACTION	NAME OF MEMBER	SHARES BOUGHT OR SOLD	PURCHASE OR SALES PRICE	NUMBER OF SHARES
February 1972	MARTIN F. RANDOLPH, JR.	200 bought	9 1/4 per share	200
May 1, 1973	MARTIN F. RANDOLPH JR.	bought	20 1/4 per share	400
August 10, 1973	MARTIN F. RANDOLPH JR.	sold	13 1/2 per share	400
Sept. 5, 1973	MARTIN F. RANDOLPH JR.	SOLD	9 1/2 per share	400
Nov. 12, 1973	MARTIN F. RANDOLPH JR.	SOLD	4 3/4 per share	200
	MICHAEL FAGAN	bought		
	GARY MICHAEL	bought		
Oct. 1971 ROSE L. GROSS		bought	$583.01	8 (now 32)
May 16, 1972	ROSE L. GROSS	bought	$1209.27	33
May 13, 1972	ROSE L. GROSS	bought	$$64.77	15

DATE OF TRANSACTION	NAME OF MEMBER	SHARE BOUGHT OR SOLD	PURCHASE OR SALE PRICE	NUMBER OF SHARES
Nov. 13,1972	ROSE L. GROSS	bought	$791.72	25
Dec. 13,1972	ROSE L. GROSS	bought	$366.50	10
Dec. 28,1971	SYLVIA K. FRENCH	bought	28 1/2 per share	50
March 24,1972	SYLVIA K. FRENCH	bought	28 1/2 per share	150
Aug. 10,1973	JOHN C. BERNIUS	bought	13 1/2 per share	100
Sept. 5,1973	ROBERT W. STODDARD	bought	8 1/2 per share	100
Jan. 8,1973	G. DIXON MAHON	bought	900 shares $30.205 per share	900
Nov. 21,1973	G. DIXON MAHON	sold	$4.125 per share	900

FIFTH: Jurisdiction of this Court to consider this Count is granted pursuant to the Securities Acts of the United States and, in particular, but without limitation as to other sections and laws which may apply, Section 17 of the Securities Act of 1933 (15 USC 77q), Section 22 of the Secutities Act of 1933 (15 USC 77v), Section 9 of the Securities Exchange Act of 1934 (15 USC 78i), Section 10(b) of the Securities Exchange Act of 1934 (15 USC 78j(b), Section 14 of the Securities Exchange Act of 1934 (15 USC 78n), Section 18 of the Securities Exchange Act of 1934 (15 USC 78r), Section 20 of the Securities Exchange Act of 1934 (15 USC 78t), and Section 32(b) of the Securities Exchange Act of 1934 (15 USC 78aa).

SIXTH: Defendant TELEPROMPTER CORPORATION is, on information and belief, a foreign corporation having its principal place of business at 50 West 44th Street, New York, N.Y.

SEVENTH: Defendant TOUCHE ROSS & COMPANY is, on information and belief, a partnership having an office and place of business at 1633 Broadway, New York, N.Y.

EIGHTH: Defendants HERBERT SCHLAFLY, WILLIAM BRESNAN and MARVYN CARTON are, on information and belief, officers, directors or persons in control of the defendant TELEPROMPTER CORPORATION who have participated in the unlawful acts involved herein and are thus personally liable therefor.

NINTH: Prior to the purchase of the stock involved herein by all of the members of the Class involved, the earliest date of purchase alleged herein being December 28,1971 the defendant TELEPROMPTER CORPORATION made a number of false and misleading statements in various published material. All of such false and misleading statements are not presently in the possession of the plaintiffs but all will be supplied prior to the trial of this action and subsequent to full examination of the defendants. However the following specific false and misleading statements are alleged herein. The specific allegations made in this complaint shall be set forth in order with the earliest misrepresentations set forth first.

1- In the 1969 annual report of TELEPROMPTER CORPORATION the cost of services, and other expenses are set forth at $10,035,454. This figure is false and the costs involved are considerably greater. The defendant, wrongfully, has capitalized various current expenses, and, in particular, the capitalization of pre-operating expenses and development costs and then, after a system becomes operational, amortizing said costs over a ten year period. These costs are current expenses and should have been set forth as such. Such proper costing would have given a far smaller earnings picture and thus the price of the stock would have been less.

2- In various reports filed with the Securities and Exchange Commission, and, in particular, the 10K report for the

year ended December 31,1970, the proxy statement submitted with respect to the annual meeting to be held May 21,1970,the proxy statement submitted with the Notice of Annual Meeting of Shareholders of October 7,1971,and the 10K report with respect to the fiscal year ending Dec. 31,1972 the defendant again sets forth various earnings figures which are false and misleading and higher than justified by the facts, again based upon the wrongful capitalization of current expenses.

3- In various reports filed with the Securities and Exchange Commission, and in public statements, false and misleading figures with respect to the number of subscribers and miles of distribution system and cable laid have been false and misleading. Specifically, but without prejudice to the showing of other instances of these facts, the proxy statement with respect to the annual meeting of May 21,1970 contains a statement, on page 27, that the number of primary subscribers of the defendant were at least 122,940 in 1969 with an additional 3,353 subscribers, 18,458 subscribers and 20,124 subscribers involved in systems which were previously under construction. In the 10K report for the fiscal year ending December 31,1972 on pages 16,17,18 and 19 there are purportedly detailed reports on the number of subscribers in each of the various systems, the miles of distribution systems, etc. These reports are also false and misleading.

4- The said defendant TELEPROMPTER CORPORATION, on information and belief, has carried subscribers who have cancelled their contracts with said defendant as active subscribers and has failed to remove said cancelled subscribers from the records of said corporation thus giving the public a totally false and misleading picture of the business of the said corporation.

5- The number of miles of cable purportedly laid

by the defendant TELEPROMPTER CORPORATION has been, on information and belief, misstated. The actual number of miles of such cable actually laid is substantially less than reported by said corporation.

TENTH: The aforesaid financial irregularities have, on information and belief, appeared in various financial statements which have been certified by the defendant TOUCHE ROSS & COMPANY thereby making said defendant liable for damages involved.

ELEVENTH: On information and belief the defendant TELEPROMPTER CORPORATION has been guilty of various other irregularities. The details of these irregularities are not specifically known to the plaintiffs as specifics at the present time but further information on these irregularities will be obtained after an inspection of the books and records of the said defendant TELEPROMPTER CORPORATION will be had and an examination on the records of the Securities and Exchange Commission with respect to the on-going investingation of TELEPROMPTER CORPORATION can be examined. However there have been widespread allegations made that there has been substantial fraud in the construction program of the said TELEPROMPTER CORPORATION and this allegation is made in addition to the specific allegation made hereinabove that the actual number of miles of cable laid by the said defendant TELEPROMPTER CORPORATION does not accord with the published figures.

TWELFTH: This action is a Class Action suit and the following set forth the relevant Class Action allegations.

a- The Class involved are purchasers of the stock of the defendant TELEPROMPTER CORPORATION from December 28,1971 to September 5,1973. Members of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE are members of this Class.

b- The number of members of this Class are not known with certainty but are believed to number at least One Hundred Thousand persons, firms,corporations and/or associations.

c- The Class in too numerous to be individually joined in this action.

d- This Class Action suit is brought under Rules 23(a), 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Proceedure.

e- The representative parties are competent to represent the class. One of the parties, the INDEPENDENT INVESTOR PROTECTIVE LEAGUE is a voluntary organization having no "axe to grind" making said organization a superior Class Representative.

f- A Class Action is a superior method of resolving this controversy since the issues of fact and law involved in this suit are common to the class and predominate over any issues of fact involving individual members.

g- Litigation involving the issues herein is already concentrated in this forum and the issues involving capitalization of current expenses are involved herein in two additional suits pending in this Court. The issues in this action with respect to construction fraud, false reports as to the number of subscribers, and false reports with respect to the miles of cable laid are limited to this specific action but are related to the other issues.

THIRTEENTH: By reason of the acts alleged herein the plaintiffs, and the Class that they represent, have sustained substantial losses. A reference to the tables annexed indicates purchases of shares at prices as high as $30.205 per share and sales as low as $4.125 per share. The purchases made would not have been made at these high figures had the facts with respect to the matters alleged

in this Complaint been known or, altgrnatively, the market price of the shares of TELEPROMPTER CORPORATION would have been substantially less.

COUNT TWO

FOURTEENTH: Plaintiffs repeat and re-allege the allegations set forth in paragraphs "FIRST","SECOND","THIRD","FOURTH","SIXTH", "SEVENTH","EIGHTH","NINTH","TENTH","ELEVENTH","TWELFTH" and "THIRTEENTH" for the foregoing Complaint as though fully set forth at length herein.

FIFTEENTH: Jurisdiction of this Count is given specifically by the Securities Acts, in particular Section 10(b) thereof and Rule 10B-5 of the Rules of the Securities and Exchange Commission.

SIXTEENTH: The specific reference to the said sections is being made herein since the allegations made are definitive of deceptive and misleading practices with respect to the purchase and sale of securities.

COUNT THREE

SEVENTEENTH: Plaintiffs repeat and re-allege the allegations set forth in paragraphs "FIRST","SECOND","THIRD","FOURTH","SIXTH", "SEVENTH","EIGHTH","NINTH","TENTH","ELEVENTH","TWELFTH" and "THIRTEENTH" of the foregoing Complaint as though fully set forth at length herein.

EIGHTEENTH: This Court acquires jurisdiction of this Count since it is a substantial and related claim to the Counts for Securities Acts violations and thus this Court acquires jurisdiction thereof pursuant to the principles of "pendent jurisdiction:.

NINETEENTH: This is a Count for common-law fraud and deceit against the defendants herein based upon the facts alleged herein.

WHEREFORE PLAINTIFFS DEMAND:

1- Damages against the defendants, jointly and severally, in behalf of the Class involved, in an amount sufficient to compensate them for their losses involved, said amount believed to be in the sum of Ten Million ($10,000,000) Dollars.

2- The afqresaid damages to be assessed in connection with each Count of the Complaint

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York, N.Y.
TELEPHONE (532)-6860

I. Walton Bader
General Counsel
INDEPENDENT INVESTOR PROTECTIVE
LEAGUE.

CERTIFICATE OF SERVICE

I, I.WALTON BADER, a member of the Bar of the State of New York, under penalties of perjury pursuant to the provisions of the New York CPLR, hereby certify that on January 3rd, 1973 I mailed a copy of the foregoing amended complaint to SHEA, GOULD, CLIMENKO etc. Attorneys for the defendant TELEPROMPTER CORPORATION, to Messrs. ROSENMAN, COLIN, etc., attorneys for the defendant TOUCHE ROSS & COMPANY and to Messrs. LAWLER, STERLING & KENT, Attorneys for the defendant HUBERT J. SCHLAFLY.

I. Walton Bader

January 7, 1974

I. Walton Bader, Esq.
Bader and Bader
274 Madison Avenue
New York, N. Y. 10016

Re: Independent Investor Protective
League v. Teleprompter
73 Civil 4133 (TPG)

Dear Mr. Bader:

At the conference before Judge Griesa on December 11, 1973, it was agreed that the plaintiffs would answer the interrogatories we have served upon them, subject to your right to object in the responses to the items noted in your letter to the Court of November 3, 1973.

Would you please advise us promptly when the answers to the interrogatories will be served.

Yours very truly,

LRE:mei

cc: Judge Griesa
Defendants' Counsel

LEXINGTON 2-6860
6861

396

CABLE ADDRESS "BAPATENTS" NEW YORK
TELEX ITT 424094

LAW OFFICES
BADER AND BADER
274 MADISON AVENUE
NEW YORK, N.Y. 10016

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER

WASHINGTON REPRESENTATIVE
ALBERT M. ZALKIND

January 8, 1974

Lawrence R. Eno, Esq.
Messrs. Rosenman Colin Kaye Petschek
Freund & Emil
575 Madison Avenue
New York, N. Y. 10022

RE: INDEPENDENT INVESTOR PROTECTIVE LEAGUE v. TELEPROMPTER
73 CIVIL 4133 (TPG)

Dear Mr. Eno:

Thank you for your letter of January 7, 1974. As you know, an Amended Complaint has been filed, in accordance with the Court's direction. It is possible that, in view of the allegations made in the Amended Complaint, you might wish to submit some additional Interrogatories in behalf of your client; which could then be answered at the same time as your first set of Interrogatories.

Also, it seems to me that if there is to be a Motion made to dismiss the Amended Complaint, that such Motion should be considered prior to the conducting of Discovery Proceedings. In addition, as you know, there is a set of Interrogatories outstanding which I have filed; and also outstanding are Notices of Taking Testimony on both sides.

At this stage, I think that the attorneys for the parties should confer wit one another to discuss a mutually satisfactory procedure. I do not think that the intervention of the Court will be necessary as I am sure that we can work out a mutually agreeable procedure for moving this case toward final determination.

Very truly yours,

I. Walton Bader

IWB:db

I. Walton Bader

cc: Hon. Thomas P. Griesa, Judge U.S. Dist. Ct. Southern Dist. of New York
cc: Messrs. Shea, Gould, Climenko Et Al.
cc: Messrs. Lawler, Sterling & Kent

January 9, 1974

I. Walton Bader, Esq.
Bader and Bader
274 Madison Avenue
New York, New York 10016

Re: Independent Investor Protective
League v. Teleprompter
73 Civil 4133 (TPG)

Dear Mr. Bader:

I have received your surprising letter of January 8, 1974.

At the conference with Judge Griesa on December 11, 1973, we pointed out that, if we desired to move to dismiss the amended complaint, we were entitled to answers to our interrogatories which were limited to questions relating to the plaintiffs' alleged stockholdings in Teleprompter and therefore their right to maintain this action. We also noted that any objections to any of the interrogatories could -- and should under the Rules -- be noted in the responses.

You agreed, and told Judge Griesa that, except for two matters, our interrogatories were proper and that you would serve responses, reserving your objections in the responses.

It was then agreed that while other questions of discovery would be held in abeyance, you would serve your responses to our interrogatories so that we would have that basic information for use in any motion to dismiss.

We must therefore insist upon a prompt response to our interrogatories in accordance with the understanding reached before Judge Griesa, and again request from you the date when they will be served.

Yours very truly,

LRE:mei

cc: Judge Griesa
Defendants' Counsel

January 11, 1974

Hon. Thomas P. Griesa
United States Courthouse
Foley Square
New York, New York 10007

Re: Independent Investor Protective League v. Teleprompter Corp.
73 Civil 4133 (TPG)

Dear Judge Griesa:

We represent defendant Touche Ross & Co. On January 7, 1974, we received copy of an amended complaint in this action mailed in an envelope postmarked January 6, 1974. This amended complaint was served following dismissal by the Court of the original complaint.

It is our desire to move to dismiss the amended complaint and for other relief. We understand that other defendants also propose to make such a motion.

As incident to the proposed motion with respect to the original complaint, we had served limited interrogatories on plaintiffs; and on December 11, 1973, plaintiffs were directed to answer those interrogatories so that the information would be available for use on any subsequent motion to dismiss. Yesterday, Mr. Bader, plaintiffs' attorney, told me on the telephone that plaintiffs would respond to those interrogatories by the end of next week, i.e. by January 18, 1974. Mr. Bader agreed to send us a letter to that effect, with a copy to the Court, but the letter has not yet been received.

In accordance with Your Honor's practice, we request a conference with the Court seeking permission to make the motion to dismiss

and for other relief. We assume that plaintiffs will have answered our interrogatories by January 18, 1974 and accordingly request that the conference be fixed for a date subsequent to January 18.

Respectfully yours,

LRE:mei

cc: I. Walton Bader, Esq.
Defendants' counsel

January 15, 1974

on. Thomas P. Griesa,
udge, U.S. District Court, Southern District of New York
.S. Courthouse, Foley Square
ew York, N. Y. 10007

RE: INDEPENDENT INVESTOR PROTECTIVE LEAGUE vs.
TELEPROMPTER CORP. 73 CIV. 4133 (TPG)

ear Judge Griesa:

n answer to the letter of January 11, 1974, addressed to your Honor by essrs. Rosenman, Colin Et Al., I wish to advise the Court that I have not, s yet, ascertained full information with respect to holdings of Teleprompter tock by Members of the IIPL. For example, one of the League's Members, r. Passerieux, is the holder of 1,200 shares of Teleprompter stock which he urchased in June, 1973, and these holdings do not appear in the Amended omplaint. Accordingly, I will probably need an additional two weeks or ntil Friday, February 1, 1974, to submit our Answers to the Interroga- ories (with objections to those previously objected to before your Honor).

n addition, it seems to me that before a Motion is made to dismiss the mended Complaint, the Defendants should be required to answer the open nterrogatories submitted by the Plaintiffs.

also call your Honor's attention to the fact that there are 2 other cases ending in this Court against Teleprompter and these cases, basically, involve he allegations of PARAGRAPH "NINTH (1) and (2)" of the Amended Complaint. he allegations in PARAGRAPH "NINTH (3), (4) and (5)" and PARAGRAPH "ELEVENTH" f the Amended Complaint are specific to this action and are not common to he other 2 pending cases.

do not know whether the Defendants in this action, the parties in the other pending actions, or the Court, on its' own Motion, may consolidate all of hese cases.

BEST COPY AVAILABLE

Hon. Thomas P. Griesa,
Judge, U.S. District Court
Southern District of New York

January 15, 1974

Finally, I enclose a copy of the Amended Complaint for the Court's consideration.

I await the Court's advice.

Respectfully,

I. Walton Bader

IWB:db
enc.

cc: Messrs. Shea, Gould Et Al.
330 Madison Avenue
New York, N.Y. 10017

cc: Messrs. Rosenman, Colin, Et Al.
575 Madison Avenue
New York, N.Y.

cc: Messrs. Lawler, Sterling & Kent
500 Fifth Avenue
New York, N.Y. 10036

The Amended Complaint is not annexed to this letter. It appears elsewhere in this Joint Appendix on pages 386-394

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,	:	
Plaintiffs,	:	CIVIL ACTION 73 Civil 4133 (RO)
-against-	:	
TELEPROMPTER CORP., et al.,	:	NOTICE OF MOTION
Defendants.	:	

- -x

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavits of Lawrence R. Eno and James K. Nevling, Jr., both sworn to August 2, 1974, the undersigned will move before Hon. Richard Owen, U.S.D.J., in Room 506 of the United States Courthouse, Foley Square, New York, New York at 2:15 P.M. on August 16, 1974, or as soon thereafter as counsel can be heard, (a) for an order, pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, compelling plaintiffs to respond to Interrogatories dated November 1, 1973 propounded to plaintiffs by defendant Touche Ross & Co., as more particularly appears in said affidavits, and (b) if plaintiffs' attorneys do not stipulate as agreed to extend to September 16, 1974 defendants' time to answer or make any motion with respect to the amended complaint, for an order, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, so to extend defendants' time; and for

other and further relief as to the Court may seem just and proper.

Dated: New York, New York
August 2, 1974

Yours, etc.

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL

By: Lawrence R. Eno
A Member of the Firm
Attorneys for defendant Touche
Ross & Co.
575 Madison Avenue
New York, New York 10022
MU 8-7800

TO: BADER & BADER, ESQS.
Attorneys for Plaintiffs
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330 Madison Avenue
New York, New York 10017

LAWLER, STERLING & KENT, ESQS.
Attorneys for defendant Herbert Schlafly
500 Fifth Avenue
New York, New York 10036

MARKEWICH ROSENHAUS MARKEWICH & FRIEDMAN, ESQS.
Attorneys for defendant William J. Bresnan
350 Fifth Avenue
New York, New York 10001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc., Plaintiffs,	CIVIL ACTION 73 Civil 4133 (RO)
-against-	
TELEPROMPTER CORP., et al., Defendants.	AFFIDAVIT

- -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co. ("Touche Ross"). I make this affidavit in support of the motion by Touche Ross, pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, to compel the plaintiffs to answer Interrogatories dated November 1, 1973 ("the Interrogatories) propounded to plaintiffs by Touche Ross, and for other relief.

Although the Interrogatories were propounded to plaintiffs on November 1, 1973, no answers were received until July 15, 1974, when we received in the mail a purported set of answers dated July 11, 1974 ("the Answers"). Despite the fact that it thus took 8 1/2 months for plaintiffs to respond to 11 simple and clear Interrogatories, the Answers are in large part unresponsive to the Inter-

rogatories. Of that period of 8 1/2 months, plaintiffs have been in default for over 5 months. On January 30, 1974, plaintiffs were directed by Judge Richard Owen to answer the Interrogatories, which were to be answered by February 5, 1974 (see Exhibit E annexed hereto). No answers, however, were served at that time or for over 5 months thereafter.

The Interrogatories are addressed almost entirely to the plaintiffs' stockholdings in Teleprompter Corp. ("Teleprompter") and thus to their standing to maintain this action. The answers to the Interrogatories were to be available for any motion defendants might wish to make addressed to the complaint and, later, the amended complaint. Judge Owen accordingly extended defendants' time to answer or move to dismiss the amended complaint to 30 days after answers to the Interrogatories were served (see Exhibit E annexed). Plaintiffs' attorneys agreed to stipulate to extend this time to September 16, 1974. An affidavit of our associate, James K. Nevling, Jr., Esq., in this connection is attached hereto. As appears from that affidavit, Mr. Nevling was told by one of plaintiffs' attorneys on July 24, 1974 that the stipulation so extending our time was ready to be picked up, but when our messenger arrived that day, he was told the stipulation had been mailed to us. It has not yet arrived, and if plaintiffs' attorneys do not perform their agreement, we request the

Court to extend our time to answer or move until September 16, 1974. This is because the Court has already determined that we are entitled to the long-delayed responses to the Interrogatories in connection with any answer, or any motion addressed, to the amended complaint.

Annexed hereto as Exhibit A is a copy of the amended complaint (the original complaint having been dismissed on December 11, 1973 by Judge Thomas P. Griesa for legal insufficiency), as Exhibit B a copy of the Interrogatories, and as Exhibit C a copy of the Answers.

There are four plaintiffs in this action: Independent Investor Protective League ("IIPL"), Gary Michael ("Michael") Michael Fagan ("Fagan") and Martin F. Randolph, Jr. ("Randolph").* The Interrogatories were addressed to all four (Exhibit B annexed). They called for answers "under oath and in writing, by each of the individual plaintiffs" and by IIPL. Only IIPL has purported to respond, and no response has been made by the individual plaintiffs. Indeed, the Answers (Exhibit C annexed) state the following on their face: "All information set forth herein is from the files of the IIPL." It is thus clear that the Interrogatories do not contain information from the individual plaintiffs themselves. Further, Rule 33(a) of

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*These are the plaintiffs set forth in the summons and in the original complaint on file in this action. In the caption of the amended complaint, the name of Michael does not appear (Exhibit A annexed). No order dropping Michael as a plaintiff has been requested or entered, and he remains a plaintiff -- as the Answers indicate.

the Federal Rules of Civil Procedure requires answers to interrogatories "to be signed by the person making them." No individual plaintiff has signed the Answers, thus again demonstrating that no individual plaintiff has responded to the Interrogatories.

For the foregoing reason alone, the motion should be granted and the individual plaintiffs should be directed to answer the Interrogatories applicable to them as provided in Rule 33(a), namely, "separately and fully in writing under oath."

We shall now proceed to demonstrate the insufficient nature of the bulk of the Answers.

1

Interrogatory 2 asked the following and received the following response:

> "2. State the names and addresses of the members of IIPL.
>
> Answer: The IIPL has hundreds of Members. A Membership List is available at the offices of the IIPL, 19 West 24th Street, New York, N. Y. and will be shown, on request."

Rule 33(c) provides in substance that where an answer may be derived from business records, and the burden of deriving the answer is substantially the same for both parties, it is sufficient for the person to whom interrogatories are addressed to afford an opportunity to the other party to examine and copy the records.

Although the applicability of that Rule was doubtful in this case, we asked plaintiffs' attorneys for an opportunity to examine and copy IIPL's Membership List ("the List"). On July 16, 1974, we were thus furnished with a copy of the List, which is annexed hereto as Exhibit D.

Far from there being "hundreds of Members" of IIPL, the list contains less than 200 names. More important, although the Answers, in response to Interrogatory 4, state that the individual plaintiffs, Fagan, Michael and Randolph, are members of IIPL, their names do not appear upon the List. Either the statement that they are members of IIPL is incorrect or the List is incorrect. In these circumstances, we are clearly entitled, pursuant to Rule 33, to a copy of the List under oath.

We accordingly request that IIPL be directed to respond to Interrogatory 2 by annexing a list of the names and addresses of the members of IIPL under oath.

2

Interrogatory 4 asked for the names of the members of IIPL who owned any shares of stock of Teleprompter during any portion of the period of time covered by the complaint. In response to Interrogatory 4, the Answers list 8 names. In addition to plaintiffs Fagan, Michael and Randolph, they are Robert W. Stoddard ("Stoddard"), John C. Bernius ("Bernius"), Sylvia K. French ("French"), G. Dixon Mahon ("Mahon"), and Rose L. Gross ("Gross").

Interrogatory 5 then asked the following, and received the following response:

> "5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.
>
> Answer: The information sought in this Interrogatory is set forth, in detail, in PARAGRAPH "FOURTH" of the Amended Complaint. The information with respect to Plaintiffs' RANDOLPH, MICHAEL and FAGAN is given in subsequent Answers."

We defer consideration of plaintiffs Fagan, Michael and Randolph until discussion of the Interrogatories where the information with respect to them purports to be given, and consider here only the other members of IIPL who allegedly owned Teleprompter shares.

The first objection to the response as to them is that it is made simply by a cross-reference to the allegations of paragraph Fourth of the amended complaint. The memorandum of law submitted by us with this motion demonstrates that an interrogatory may not be answered by cross-reference to another document, particularly to a pleading. For this reason alone, IIPL should be directed to serve a proper response to this Interrogatory as required by Rule 33(a).

Moreover, even if one were to consider the cross-reference to paragraph Fourth of the amended complaint, the response would be wholly insufficient for the following reasons:

(a) As to Gross, French, Bernius and Stoddard, paragraph Fourth only sets forth the dates on which they purportedly bought shares of stock of Teleprompter, the number of shares purchased on each date and the price paid. None of the other information called for by Interrogatory 5 is given, namely, the required information as to sales of Teleprompter stock by such persons, the number of shares presently owned by each such person and the name in which the shares were or are held. Even as to purchases of Teleprompter stock, paragraph Fourth does not show whether there were any purchases other than those listed.

(b) As to Mahon, paragraph Fourth sets forth the dates on which he purportedly purchased and sold shares of stock of Teleprompter, the number of shares purchased and sold, and the price paid and received. However, there is nothing to show whether there were any other purchases and sales by Mahon (and if so, the required information with respect thereto), the number of shares of Teleprompter presently owned by him or the name in which the shares were or are held by him -- all as required by Interrogatory 5.

Accordingly, the Court should direct a response to Interrogatory 5 first because the cross-reference to the complaint does not constitute a response and, second, even if the cross-reference were taken into account, the res-

ponse is insufficient.

3

Interrogatories 6 and 7 asked the following and received the following response:

> "6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").
>
> 7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.
>
> Answers: The addresses of these parties have been previously furnished. The undersigned does not have information in his files with respect to the occupations of these Plaintiffs, at the present time."

Except for the addresses of plaintiffs Randolph, Michael and Fagan (which are given in the Answers in response to Interrogatory 4), the response is entirely insufficient. It is no answer to say that "the undersigned [either the attorney for plaintiffs or IIPL] does not have in his files" the information requested. The Interrogatories were addressed to the individual plaintiffs, as well as to IIPL, and the individual plaintiffs have the information with respect to their occupations and their other addresses, as called for by Interrogatories 6 and 7. The individual plaintiffs should accordingly be directed to supply this information.

4

Interrogatory 8 asked the following and received the following response:

"8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: Information with respect to the Plaintiff RANDOLPH is set forth in full in PARAGRAPH "FOURTH" of the Amended Complaint."

Here again, as shown by the accompanying memorandum of law, the purported response is wholly insufficient by virtue of its cross-reference to the amended complaint. For this reason alone, a response by plaintiff Randolph should be directed by the Court. In addition, the response is not made by the plaintiff Randolph himself as required by the Interrogatories and Rule 33. The response on its face sets forth only information claimed to be known by IIPL.

Even if one were to consider the cross-reference, the response would be insufficient. Paragraph Fourth of the Amended complaint sets forth the dates on which plaintiff Randolph purportedly purchased and sold shares of Teleprompter, the number of shares purchased and sold, and the price paid and received. However, there is nothing to show whether there were any other purchases and sales

by Randolph (and if so, the information respecting them), the number of shares of Teleprompter presently owned by him, or the name in which the shares were or are held by him -- all as required by Interrogatory 8.

5

Interrogatory 9 asked the following and received the following response:

> "9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.
>
> Answer: The following sets forth the required information with respect to the Plaintiff MICHAEL:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	100	$30.00 "

The response is, first, wholly insufficient because not made by plaintiff Michael. It purports to set forth only information known to IIPL. As already noted, the Interrogatories were addressed not only to IIPL but to the individual plaintiffs as well. A response to Interrogatory 9 by plaintiff Michael should be directed as required by Rule 33(a).

Moreover, the response is on its face wholly insufficient. It shows only one purchase by plaintiff Michael,

and does not indicate whether there were other purchases by him (and if so, the required information with respect thereto), it does not show whether he made any sales of Teleprompter stock (and if so, the required information with respect thereto), it does not show how many shares of stock he presently owns, and it does not set forth the name in which the shares were or are held -- all as required by Interrogatory 9.

6

Interrogatory 10 asked the following and received the following response:

> "10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.
>
> Answer: The following information is submitted with respect to the Plaintiff FAGAN:

Date of Purchase	No. of Shares Purchased	PRICE Per Share Paid
March 10, 1972	50	$29-7/8 "

The situation here is precisely the same as that with respect to the plaintiff Michael and Interrogatory 9. For all the same reasons there set forth, a response to In-

terrogatory 10 by plaintiff Fagan should be directed as required by Rule 33(a).

CONCLUSION

For the foregoing reasons, the following relief is requested:

1. That the Court direct the plaintiff Martin F. Randolph Jr. to respond, separately and fully in writing under oath, to Interrogatories 6 and 7 insofar as applicable to him and to Interrogatory 8.

2. That the Court direct the plaintiff Gary Michael to respond, separately and fully in writing under oath, to Interrogatories 6 and 7 insofar as applicable to him and to Interrogatory 9.

3. That the Court direct the plaintiff Michael Fagan to respond, separately and fully in writing under oath, to Interrogatories 6 and 7 insofar as applicable to him and to Interrogatory 10.

4. That the Court direct the plaintiff IIPL to respond, separately and fully in writing under oath, to Interrogatory 5 and to Interrogatory 2 by annexing a list of the names and addresses of the members of IIPL.

Sworn to before me this
2nd day of August, 1974.

Lawrence R. Eno
LAWRENCE R. ENO

Marlene Herman
Notary Public

MARLENE HERMAN
Notary Public, State of New York
No. 41-686 365
Qualified in Queens County
Commission Expires March 30, 1976

* * * *

[Exhibit A to the preceding affidavit is a copy of the amended complaint. It is not reproduced here, but another copy of the amended complaint appears at pages 386-394 above].

OFFICE COPY
SERVED 11/1/73
RECEIVED
FILED IN COURT 11/8/73
D & E 57m

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

- -x

Civil Action
73 Civil 4133
(TPG)

INTERROGATORIES

INTERROGATORIES TO PLAINTIFFS
(FIRST SET)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendant Touche, Ross & Co., by its attorneys, Rosenman Colin Kaye Petschek Freund & Emil, hereby propounds the following Interrogatories to plaintiffs, to be answered within thirty (30) days after service hereof, under oath and in writing, by each of the individual plaintiffs and by plaintiff Independent Investor Protective League by an officer or duly authorized agent thereof.

The Interrogatories are as follows:

1. State (a) (i) the date when and (ii) the place where Independent Investor Protective League ("IIPL") was organized, (b) whether there are any articles of association or similar documents of IIPL, and if so (c) all of the places where the same may be found.

2. State the names and addresses of the members of IIPL.

3. State (a) the names and addresses of the (i) offi-

EXHIBIT B

Filed 11/1/73

cers, (ii) executives, and (iii) employees of IIPL, and (b) the positions occupied by each of them.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per

share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

11. (a) State whether IIPL at any time owned any shares of Teleprompter, and if so, state (b) (i) the date when it furst purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (c) (i) the date of each subsequent purchase by it of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (d) (i) the date of each sale by it of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (e) the number of shares of Teleprompter presently owned by it, and (f) in each instance the name in which the shares were or are held.

Dated: New York, New York
November 1, 1973

Yours, etc.,

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

By _____
A Member of the Firm

Attorneys for defendant Touche, Ross & Co.
575 Madison Avenue
New York, New York 10022
MU 8-7800

TO:

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Attorneys for defendant Herbert Schlafly
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New York, New York 10036

OFFICE OF THE GENERAL COUNSEL
Securities and Exchange Commission
Washington, D.C. 20549

482

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 Civil 4133
JUDGE OWEN

ANSWERS

PLAINTIFFS' ANSWERS TO INTERROGATORIES OF THE DEFENDANT TOUCHE, ROSS & CO. (FIRST SET)

Plaintiffs answering the Interrogatories of the Defendant TOUCHE, ROSS & CO. state, as follows:

All information set forth herein is from the files of the IIPL.

1. State (a) (i) the date when and (ii) the place where Independent Investor Protective League ("IIPL") was organized, (b) whether there are any articles of association or similar documents of IIPL, and if so (c) all of the places where the same may be found.

Answer: The IIPL is an Unincorporated Association organized in 1972. It has a Constitution which is available for inspection at the office of IIPL, 19 West 24th Street, New York, N. Y. 10010.

EXHIBIT C

2. State the names and addresses of the members of IIPL.

Answer: The IIPL has hundreds of Members. A Membership List is available at the offices of the IIPL, 19 West 24th Street, New York, N. Y. and will be shown, on request.

3. State (a) the names and addresses of the (i) officers, (ii) executives, and (iii) employees of IIPL, and (b) the positions occupied by each of them.

Answer: The following are the Officers of the IIPL with their respective addresses:

Richard A. Gordon, President
19 West 24th Street
New York, N. Y. 10010

Charles J. Lillin, Vice President
19 West 24th Street
New York, N. Y. 10010

Merrill Sands, Secretary
Pritton Hill Road
Brookfield Center, Connecticut

The Directors of the League are the Officers. There are no other employees.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

Answer: Michael Fagan
Watson Lane
Danbury, Connecticut

Gary Michael
100 Chalet Village
Stockbridge, Vermont

Martin F. Randolph, Jr.
70 Deer Hill Avenue
Danbury, Connecticut

Robert W. Stoddard
108 Cherry Avenue
West Sayville, Long Island

John C. Bernius
116 Lincoln Avenue
Sayville, Long Island

Sylvia K. French
1100 Park Avenue
New York, N. Y.

G. Dixon Mahon
Drawer 949
Ozona, Texas

Rose L. Gross
3099 Brighton 6th Street
Brooklyn, N. Y.

5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of

shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.

Answer: The information sought in this interrogatory is set forth, in detail, in PARAGRAPH "FOURTH" of the Amended Complaint. The information with respect to Plaintiffs' RANDOLPH, MICHAEL and FAGAN is given in subsequent Answers.

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answers: The addresses of these parties have been previously furnished. The undersigned does not have information in his files with respect to the occupations of these Plaintiffs, at the present time.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the

price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: Information with respect to the Plaintiff RANDOLPH is set forth in full in PARAGRAPH "FOURTH" of the Amended Complaint.

9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of

shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the required information with respect to the Plaintiff MICHAEL:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	100	$50.00

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following information is submitted with respect to the Plaintiff FAGAN:

Date of Purchase	No. of Shares Purchased	PRICE Per Share Paid
March 10, 1972	50	$29-7/8

11. (a) State whether IIPL at any time owned any shares of Teleprompter, and if so, state (b) (i) the date when it first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (c) (i) the date of each subsequent purchase by it of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (d) (i) the date of each sale by it of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (e) the number of shares of Teleprompter presently owned by it, and (f) in each instance the name in which the shares were or are held.

Answer: The IIPL does not own any stock in TELEPROMPTER nor has it ever owned any such stock. However, its' raison d'etre is the protection of investors against discriminatory and predatory practices.

Dated: June 11, 1974

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs

By: _____

I. Walton Bader
274 Madison Avenue
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Tel. (212) LE 2-6860.

TO: All the Attorneys
for the Defendants

VERIFICATION

STATE OF : NEW YORK)
) ss.:
COUNTY OF : NEW YORK

RICHARD A. GORDON being duly sworn, deposes and says that he is the President of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same are true to his own knowledge except as to matters stated therein to be alleged on information and belief and as to those matters he believes them to be true.

SWORN TO BEFORE ME

THIS 11th DAY OF
July
~~JUNE~~, 1974.

Richard A. Gordon

NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. Walton Bader, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify that on June 11, 1974, I mailed a copy of the within document to all the attorneys for the defendants, by depositing same in the mail-chute at 274 Madison Avenue, New York, N.Y. 10016.

I. Walton Bader

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CABLE ADDRESS
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February 13, 1974

Hon. Richard Owen
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Re: Independent Investor Protective League v. Teleprompter Corp.
73 Civil 4133 (RO)

Dear Judge Owen:

On November 1, 1973, when this case was assigned to Judge Griesa, we served interrogatories on plaintiffs addressed solely to their stockholdings in defendant Teleprompter. On December 11, 1973, at a conference with Judge Griesa, at which the complaint was dismissed with leave to amend, plaintiffs were directed to answer the interrogatories (except that they could note in their answers objections to interrogatories as to plaintiffs' occupations and as to members of Independent Investor Protective League who did not own stock in Teleprompter) so that the answers would be available for any motion defendants might wish to make addressed to the amended complaint. In a letter to Judge Griesa dated January 15, 1974, plaintiffs stated that the answers would be served by February 1, 1974.

After that letter was sent, the case was reassigned to Your Honor. At a conference with Your Honor on January 30, 1974 plaintiffs were again directed to answer the interrogatories and plaintiffs' counsel stated that the answers would be served on February 4 or 5, 1974. Since our time to move to dismiss the amended complaint expires on February 15, 1974, Your Honor stated that we could have reasonable additional time beyond that date to make our motion to dismiss since the answers would not be forthcoming until February 4 or 5.

EXHIBIT E

Hon. Richard Owen
United States Courthouse -2- February 13, 1974

The answers to the interrogatories have still not been served. We accordingly assume, on the basis of the Court's statements on January 30, 1974, that our time to move to dismiss the complaint will be extended beyond February 15, 1974 for a reasonable time after the answers have been served.

Respectfully yours,

Lawrence R. Eno

LRE:mei

cc: I. Walton Bader, Esq.
Defendants' Counsel

30 days after answer served

R.O.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc., Plaintiffs, -against- TELEPROMPTER CORP., et al., Defendants.	CIVIL ACTION 73 Civil 4133 (RO) AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JAMES K. NEVLING, JR., being duly sworn, deposes and says:

1. I am an attorney associated with the law firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co.

2. On Tuesday, July 16, 1974, at approximately 5:15 P.M., I went to the offices of Bader & Bader, attorneys for plaintiffs, at 274 Madison Avenue, New York, New York, where I spoke with I. Walton Bader, Esq., a partner in the firm. In the course of our conversation he stated that he would give a reasonable extension of time to move or answer.

3. On Wednesday or Thursday, July 17 or 18, 1974, I tried to telephone Mr. Bader at his office number (532-6860) with respect to that extension of time. When I dialed

that number, however, I reached an answering service. I asked them to have Mr. Bader call me, and they took my name and telephone number.

4. In the period between Wednesday, July 17, and Tuesday, July 23, 1974, I called Mr. Bader's telephone number (532-6860) at least three more times and left at least two more messages asking him to telephone me and leaving my name and telephone number.

5. In the evening of Tuesday, July 23, 1974, I telephoned Mr. Bader again and spoke to him at his office. In our conversation he agreed to extend the time to move or answer until September 16, 1974.

6. On Wednesday, July 24, 1974, I sent Mr. Bader by hand the original and one copy of a stipulation extending defendants' time to move or answer to September 16, 1974, together with a covering letter. Copies of this stipulation and covering letter are annexed hereto as Exhibit 1. The letter asked Mr. Bader to sign the stipulation and to return it to us either with our messenger or by mail.

7. When I received no response to this letter, I again attempted to reach Mr. Bader by telephone. On Tuesday, July 30, 1974, I spoke to him in the morning by telephone. When I asked about the stipulation, he stated that it was on his desk, and said he had not mailed it because he had expected me to send a messenger to pick it up. I said I

would arrange for a messenger to pick it up as soon as possible.

8. On the afternoon of July 30, 1974, I arranged to have a messenger go to the offices of Bader & Bader to pick up the stipulation. At about 3:00 P.M., I received a call from our messenger, who said that he was calling from the offices of Bader & Bader, and that there was nothing there to be picked up. I then spoke with someone who represented herself to be the secretary of Mr. Bader. She stated that the stipulation had been mailed to me. It has not yet been received.

Sworn to before me this
2nd day of August, 1974.

Notary Public

JOHN A. COAN
Notary Public State of New York
No. 31-0669960
Qualified in New York County
Commission Expires March 30, 1975

JAMES K. NEVLING, JR.

413

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
MAX FREUND
STONEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSINY
AMBROSE DOSKOW
SEYMOUR O. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
WILLIAM W. GOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOETZ
SAMUEL M. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALZIN
HAL L. BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMAN
1896-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

BY HAND

July 24, 1974

I. Walton Bader, Esq.
Bader & Bader
274 Madison Avenue
New York, New York

Re: IIPL et al. v. Teleprompter Corp. et al.

Dear Mr. Bader:

I am enclosing an original and one copy of a stipulation which extends our time to move or answer to September 16, 1974, pursuant to our conversation of yesterday evening. I would appreciate it if you would sign the original of the stipulation and return it to me either with my messenger or in the enclosed envelope. The copy is for your files.

Thank you for your cooperation in this matter.

Very truly yours,

James K. Nevling, Jr.

James K. Nevling, Jr.

JKN/lw
Enclosure

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

----------X

STIPULATION AND ORDER

73 CIV. 4133 (RO)

IT IS HEREBY STIPULATED AND AGREED that the time of all defendants in this action to answer or to make any motion with regard to the amended complaint is extended to and including September 16, 1974.

Dated: New York, New York
July 24, 1974

BADER & BADER

By_____
A Member of the Firm
Attorneys for plaintiffs

SHEA, GOULD, CLIMENKO & KRAMER

By_____
A Member of the Firm
Attorneys for defendant Teleprompter Corporation

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

By_____
A Member of the Firm
Attorneys for defendant Touche Ross & Co.

LAWLER, STERLING & KENT

By_____
A Member of the Firm
Attorneys for defendant
Hubert J. Schlafly

SO ORDERED:

_____

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc., ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 CIVIL 4133
(RO)

AFFIRMATION IN OPPOSITION TO MOTION TO COMPEL FURTHER ANSWERS TO INTERROGATORIES

I, WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby states the following under penalties of perjury. This document has the force of an Affidavit under the Laws of the State of New York.

It is not believed that the position of the Defendant TOUCHE ROSS & CO., with respect to the objections set forth in its' Motion, is well-taken. In general, Interrogatories addressed to Joint Plaintiffs need be answered by only one Plaintiff.

With respect to the objections to the Answers of the IIPL, it is noted that the League supplied a List of its' Membership. It is conceded that this List was not complete.

This list was typed from a card index of Members of the League and, concededly, could have contained some omissions. The Defendant TOUCHE ROSS & CO. concedes that the League need only make its' Membership List available for inspection. The Defendant TOUCHE ROSS & CO. is at liberty to inspect the card index of the Membership of the IIPL, at the Offices of the League 19 West 24th Street, New York, N. Y., upon appropriate notice.

While it is not necessary for the Plaintiffs to individually answer the interrogatories with respect to stock holdings, in the present form; it is conceded that such Answers could be required by submitting individual interrogatories to each of the Plaintiffs. The undersigned has written to the Plaintiffs but has not received answers from them. Annexed to this Affirmation is a form letter which has been sent to such Plaintiffs. Accordingly, such information will be supplied with respect to each individual Plaintiff, provided the undersigned is given sixty (60) days from the Date of this Affirmation to comply.

WHEREFORE, the undersigned prays that the Motion be disposed of as set forth in this Affirmation.

Dated: August 15, 1974

I. Walton Bader

I. Walton Bader

CERTIFICATE OF SERVICE

I., I. WALTON BADER, hereby certify as a Member of the Bar of the State of N. Y., under penalties of perjury, that on August 15, 1974, I mailed a copy of the within AFFIRMATION to all of the attorneys affected by same.

I. WALTON BADER.

LEXINGTON 2-6860
6861

CABLE ADDRESS "BAPATENTS" NEW YORK
TELEX "ITT 424094"

LAW OFFICES
BADER AND BADER
274 MADISON AVENUE
NEW YORK, N.Y. 10016

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER

WASHINGTON REPRESENTATIVE
ALBERT M. ZALKIND

August 15, 1974

TO ALL PLAINTIFFS IN TELEPROMPTER LITIGATION:

It is necessary, IMMEDIATELY, that you supply me with certain information with respect to your stockholdings, purchases and sales of stock in TELEPROMPTER CORP. This information is necessary in order to continue to prosecute the litigation, on your behalf. The information is necessary to prepare formal Answers to Interrogatories that have been served in this case.

Would you please IMMEDIATELY give me Answers to the following questions:

1. HOW MANY SHARES OF TELEPROMPTER CORP. DO YOU PRESENTLY OWN?

2. IN WHOSE NAME ARE THE SHARES REGISTERED (ARE THEY REGISTERED IN YOUR NAME OR ARE THEY REGISTERED IN THE BROKER'S NAME?

3. WHEN DID YOU BUY THE SHARES?

4. HOW MUCH DID YOU PAY FOR THE SHARES?

5. HAVE YOU EVER SOLD ANY TELEPROMPTER SHARES?

6. IF YOU HAVE SOLD SUCH SHARES, HOW MUCH DID YOU RECEIVE FOR THEM?

7. WHAT IS YOUR PRESENT OCCUPATION?

August 15, 1974

TO ALL PLAINTIFFS IN TELEPROMPTER LITIGATION

Please note that if I do not receive this information within the next ten days, it is possible that you might be dropped as a party to the stockholders' litigation.

Sincerely,

BADER and BADER

IWB:db

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,	:	
Plaintiffs,	:	CIVIL ACTION 73 Civil 4133 (RO)
-against-	:	REPLY AFFIDAVIT
TELEPROMPTER CORP., et al.,	:	
Defendants.	:	

- -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

1. My office received in the mail this morning (August 16, 1974), the return date of this motion, a so-called Affirmation in Opposition to this motion, which was mailed on August 15, 1974.

2. I. Walton Bader, Esq., one of plaintiff's attorneys, called me on the telephone yesterday. He at that time told me that he would consent to the motion if we agreed to give him another 90 days in which to respond to the Interrogatories. He also then told me that the reason the Interrogatories had not been answered by the individual plaintiffs was because they had not replied to his communications. I told Mr. Bader that I thought it best for the Court to dispose of the motion.

3. There is no substance to the Affirmation in Opposition which, indeed, contains some shocking admissions:

(a) It is admitted that plaintiff Independent Investor Protective League ("IIPL") furnished us with an incorrect Membership List. Mr. Bader says that we "concede" that IIPL need only make its Membership List available for inspection, and suggests that we inspect some index cards to find the members. We made, and make, no such concession, and we should not be required to examine anything. We have already examined IIPL's Membership List. We have shown that it is an unreliable document, and IIPL now so concedes. It should be required to furnish a copy of its Membership List under oath.

(b) Mr. Bader says that it is not necessary for the individual plaintiffs to answer the Interrogatories. This is not so. The Interrogatories were addressed to the individual plaintiffs as well as to IIPL, and called for answers by the individual plaintiffs. Not only does Mr. Bader cite no authority for his proposition, but his present position is contrary to what he told me yesterday, namely, that the reason the Interrogatories had not been answered by the individual plaintiffs was that they had not responded to his communications.

(c) Mr. Bader admits that even now, 9 1/2 months after the Interrogatories were served, he is completely uninformed as to the stockholdings in Teleprompter of the individual plaintiffs -- an absolute <u>sine qua non</u> to their right to maintain this action. He annexes to his affirmation a "form letter" dated <u>August 15, 1974</u> which he has sent to the individual plaintiffs to acquire some of that information. That letter, sent 10 days after Mr. Bader

received our motion papers, does not even make all the necessary inquiries to respond to the Interrogatories. It is apparent that the individual plaintiffs have completely abandoned their responsibilities as litigants in this Court and that Mr. Bader has not fulfilled his responsibilities as their attorney.

4. Mr. Bader asks for an additional 90 days to submit responses to the Interrogatories. We oppose that request. It has now been 9 1/2 months since the Interrogatories were served, and what Mr. Bader is asking for is one year to respond to simple Interrogatories relating to the plaintiffs' stockholdings in Teleprompter. No reason is given for this extraordinary request. It should have taken, and should take, one day for plaintiffs to supply the required information if they are responsible litigants.

5. It is accordingly requested that our motion be granted in all respects and that plaintiffs be given no more than ten (10) days in which to respond, separately and fully in writing under oath, to the Interrogatories as set forth at p. 12 of the moving affidavit.

Sworn to before me this
16th day of August, 1974.

Marlene Herman
Notary Public

MARLENE HERMAN
Notary Public, State of New York
No. 41-6867365
Qualified in Queens County
Commission Expires March 30, 1976

Lawrence R. Eno
LAWRENCE R. ENO

CIVIL 1133 (10)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR
PROTECTIVE LEAGUE, etc.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants

ORIGINAL

NOTICE OF MOTION AND
AFFIDAVITS

Rosenman Colin Kaye Petschek Freund & Emil

Attorneys for Touche Ross & Co.

575 Madison Avenue
Borough of Manhattan New York City
MUrray Hill 8-7800

70

U.S. DISTRICT COURT
FILED
AUG 16 1974
S.D. OF N.Y.

Motion granted in its entirety and is to be complied with in twenty days time
SO ORDERED
8/16/74

U.S.D.J.

MICROFILM
AUG 16 1974

454

U.S. DISTRICT COURT
FILED
SEP 11 1974
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et. al.

Plaintiffs

against

Civil Action
73 Civil 4133
RO

TELEPROMPTER CORP. et. al.

Defendants

NOTICE OF TAKING TESTIMONY

NOTICE IS HEREBY GIVEN that the deposition of the defendant TOUCHE, ROSS & COMPANY, by its deisgnated Officer, agent and/or employee familiar with the facts, will be taken as an Adverse Party, before Trial, as provided by the Federal Rules of Civil Procedure.

NOTICE is further given that the said party is to designate the proper individual to be examined as provided by said Rules.

NOTICE is further given that the said party is to produce, on said deposition, the following books, records, and documents.

1-All work papers with respect to all audits conducted by the said TOUCHE ROSS & COMPANY of TELEPROMPTER CORPORATION which resulted in the certifications made on all financial reports of TELEPROMPTER CORPORATION by the said

TOUCHE ROSS & COMPANY from October 1971 to date.

2- All specific records with respect to the following matters from October 1971 to date.

a- The number of miles of cable laid by the defendant TELEPROMPTER CORPORATION.

b- The Oakland Cable TV franchise.

c- All records of cancellations by customers of service of TELEPROMPTER CORPORATION.

d- Records of contributions made by TELEPROMPTER CORPORATION to MTCA.

e- All cap talized expenses.

3- All specific records with respect to all disciplinary or any other proceedings commenced by the Securities and Exchange Commission against the defendant TOUCHE ROSS & COMPANY with respect to (1) accounting quality of work, (2) misrepreeentations of audits, (3) any other matters relating to accounting.

The depositions will be taken on September 30th, 1974 at 10 o'clock in the forenoon, at the United States District Courthouse, Southern District of New York, Room 601, Foley Square, New York, N.Y. You are invited to attend and cross-examine.

NOTICE is further given that upon failure of said parties to appear as demanded we shall take the proceedings provided under the Federal Rules of Civil Procedure.

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York, NY 10016

TO: ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL
Attorneys for TOUCHE ROSS & COMPANY
575 Madison Avenue
New York NY 10022

SHEA GOULD, CLIMENKO etc.
Attorneys for defendant TELEPROMPTER CORPORATION
330 Madison Avenue
New York NY 10017

LAWLER STERLING & KENT, Esqs.
Attorneys for defendant SCHLAFLY etc.
500 Fifth Avenue
New York NY 10036

MARKEWICH ROSENHAUS, etc.
Attorneys for named defendants
350 Fifth Avenue
New York NY 10001

CERTIFICATE OF SERVICE

I hereby certify that on September ~~5th~~ 10th, 1974 I served a copy of the foregoing Notice of Taking Testimony upon all attorneys for the defendant listed above with the exception of Messrs. Rosenman Colin. Thus under penalties ofperjury pursuant to New York CPLR.

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
et. al.

Plaintiffs

Civil Action
73 Civil 4133 RO

against

TELEPROMPTER CORPORATION et. al.

Defendants

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affirmation of I.WALTON BADER, dated September 11th, 1974 and the exhibits annexed hereto the undersigned will move this Court, before HON. RICHARD OWEN, United States District Judge, at a Motion Part thereof, to be held at the Courthouse, Foley Square, New York, N.Y. on Friday September 20th, 1974 at 2:15 O'clock in the afternoon, for an Order extending the time for compliance with the Order of this Court directing further answers to interrogatories on the part of the plaintiffs MICHAEL FAGAN and GARY MICHAEL for a period of thirty (30) days and for such other further and different relief as this Court may deem just and proper.

Dated : September 11th, 1974

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York NY 10016

TO: Defendants' attorneys.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
etc.

Plaintiffs

Civil Action
73 Civil 4133 RO

against

TELEPROMPTER CORPORATION et. al.

Defendants

AFFIRMATION IN SUPPORT OF MOTION

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury.

I am one of the attorneys for the plaintiffs herein and am fully familiar with the facts and circumstances of this action.

This Court has heretofore directed the service of further answers to interrogatories within twenty(20) days from the date of the Order of the Court.

In compliance with the Court's order the undersigned prepared answers with respect to the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE, served said answers on the attorneys for all defendants within the time allowed, which answers are believed to be in full compliance with the order of the Court.

In connection with the plaintiffs RANDOLPH, FAGAN and MICHAEL I requested information from them, received their replies as annexed hereto, and prepared answers to be verified by said parties. I received answers from the plaintiff RANDOLPH and have served same upon the defendants' attorneys.

I have not yet received answers from the defendants FAGAN or MICHAEL. I have prepared proposed answers based upon the information received from them. I would expect that these answers will be received momentarily. However, since they have not and the time has passed for compliance w ith the Order of this Court, I respectfully request that additional time be given to prevent prejudice upon said defendants.

I cannot tell the reason for the delay. I have sent these documents to my clients in sufficient time for them to be returned. I would expect that, within the next few days, I will receive them. I have written to the said parties and requesting return of the documents immediately.

WHEREFORE the undersigned prays that this Motion be in all respects granted/

Dated :September 11th, 1974

I.Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, GARY MICHAEL

The Plaintiff GARY MICHAEL submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My address is 100 Chalet Village, Stockbridge, Vermont. I am a law student.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those

set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that set forth hereinabove.

9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth purchase information with respect to my holdings of stock of Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
April 1, 1972	100	30

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiff

By: _____

I. Walton Bader
274 Madison Avenue
New York, N.Y. 10016
Telephone: (212) LE 2-6800

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: VERMONT)
) ss.:
COUNTY OF: _____)

GARY MICHAEL, being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes is to be true.

SWORN TO BEFORE ME

THIS _____ DAY OF

_____, 1974.

_____
Gary Michael

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify under penalties of perjury, that on _____, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

_____
I. Walton Bader.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MICHAEL FAGAN

The Plaintiff MICHAEL FAGAN submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is Watson Lane, Danbury, Connecticut 06810. I am a conductor, employed by the Penn Central Railroad.

7. (a) State whether any of Randolph, Michael and

Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that listed above.

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	50	29-7/8

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Pltfs.

By: _____

I. Walton Bader
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-[illegible]

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: CONNECTICUT)
) ss.:
COUNTY OF: _____)

MICHAEL FAGAN, being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE ME
THIS _____DAY OF
_____, 1974.

_____
Michael Fagan

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on _____, 1974, I mailed a copy of the within document to all of the Attorneys for the Defendants.

_____
I. Walton Bader.

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
274 MADISON AVENUE
NEW YORK, N.Y. 10016
000-5313

August 15, 1974

FICE OF THE GENERAL COUNSEL

-. Michael Fagan
atson Lane
anbury, Conn. 06810

ear Mr. Fagan:

s you know, the litigation with respect to TELEPROMPTER CORP. has been oving along. In order to properly protect your rights, it will be necessary for me to file a Statement, under oath, setting forth the following information:

1. HOW MANY SHARES OF TELEPROMPTER CORP. DO YOU PRESENTLY OWN? 50
2. IN WHOSE NAME ARE THE SHARES REGISTERED (ARE THEY REGISTERED IN YOUR NAME OR ARE THEY REGISTERED IN THE BROKER'S NAME? MICHAEL FA
3. WHEN DID YOU BUY THE SHARES? TRADE DATE 3/10/72 PAYMENT DATE 4/4/72
4. HOW MUCH DID YOU PAY FOR THE SHARES? $1,523.66 Price 29 7/8
5. HAVE YOU EVER SOLD ANY TELEPROMPTER SHARES? No
6. IF YOU HAVE SOLD SUCH SHARES, HOW MUCH DID YOU RECEIVE FOR THEM?
7. WHAT IS YOUR PRESENT OCCUPATION? Penn Central Railroad Conc

TELEPROMPTER CORP. is attempting to do everything that it can to harass and annoy us and prevent vindication of our rights.

Unless I receive this information within the next TEN DAYS, there might be serious consequences with respect to your claim. Therefore, would you please treat this as URGENT.

Sincerely,
INDEPENDENT INVESTOR PROTECTIVE LEAGUE

Ralph Nader

R. Walter Nader, General C...

BEST COPY AVAILABLE

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
274 MADISON AVENUE
NEW YORK, N.Y. 10016
889-5313

OFFICE OF THE GENERAL COUNSEL

August 15, 1974

Mr. Gary Michael
100 Chalet Village
Stockbridge, Vermont

Dear Mr. Michael:

As you know, the litigation with respect to TELEPROMPTER CORP. has been moving along. In order to properly protect your rights, it will be necessary for me to file a Statement, under oath, setting forth the following information:

1. HOW MANY SHARES OF TELEPROMPTER CORP. DO YOU PRESENTLY OWN? 100
2. IN WHOSE NAME ARE THE SHARES REGISTERED (ARE THEY REGISTERED IN YOUR NAME OR ARE THEY REGISTERED IN THE BROKER'S NAME? Street name
3. WHEN DID YOU BUY THE SHARES? 4/1/72
4. HOW MUCH DID YOU PAY FOR THE SHARES? 30.00 a share
5. HAVE YOU EVER SOLD ANY TELEPROMPTER SHARES? No
6. IF YOU HAVE SOLD SUCH SHARES, HOW MUCH DID YOU RECEIVE FOR THEM? N/A
7. WHAT IS YOUR PRESENT OCCUPATION? Law Student

TELEPROMPTER CORP. is attempting to do everything that it can to harass and annoy us and prevent vindication of our rights.

Unless I receive this information within the next TEN DAYS, there might be serious consequences with respect to your claim. Therefore, would you please treat this as URGENT.

Sincerely,
INDEPENDENT INVESTOR PROTECTIVE LEAGUE

I. Walton Cader, General Counsel.

Gary Michael

Bcb

EXINGTON 2-6800
6051

LAW OFFICES
BADER AND BADER
274 MADISON AVENUE
NEW YORK, N.Y. 10016

CABLE ADDRESS "BAPATENTS" NEW YORK
TELEX ITT 424094

R. MAXIMILIAN BADER
R. I. WALTON BADER
ILTON BADER

WASHINGTON REPRESENTATIVE
ALBERT M. ZALKIND

September 10th, 1974

Re: Teleprompter Corporation

Mr. Michael Fagan
Watson Lane
Danbury Conn. 06810

Mr. Gary Michael
100 Chalet Village
Stockbridge Vermont

Gentlemen,

I have not yet received the answers to interrogatories which I sent to you almost two weeks ago.

The time for answers has now expired and we have a serious risk of the Court dismissing this action as far as you are concerned.

May I ask for immediate return of the documents.

Very truly yours,

I.Walton Bader

IWB/fg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
SEP 16 1974
S. D. OF N. Y.

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

- -x

73 Civ. 4133 (RO)

ORDER TO SHOW CAUSE

Upon the annexed affidavits of Lawrence R. Eno and James Kelley Nevling, Jr., both sworn to September 13, 1974, and the prior proceedings herein,

Let the plaintiffs show cause before Hon. Richard Owen, U.S.D.J., in Room 2804 of the United States Courthouse, Foley Square, New York, New York at 2:15 P.M. on September 20, 1974, or as soon thereafter as counsel can be heard, (a) for an order, pursuant to Rules 37(b) and (d) of the Federal Rules of Civil Procedure, dismissing the complaint as to each of the plaintiffs, or imposing such other sanctions as the Court shall deem appropriate, by reason of the plaintiffs' failure to comply with the order of this Court of August 16, 1974, and (b) if the complaint not be dismissed as aforesaid, for an order, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, extending defendants' time to answer or make any other motion with respect to the amended complaint until 30 days after plaintiffs have fully responded to Interrogatories dated November 1, 1973 propounded to plaintiffs by defendant Touche Ross & Co. and in any event to October 16, 1974; and for such other

and further relief as to the Court may seem just and proper; and it is further.

ORDERED that defendants' time to answer or otherwise move with respect to the amended complaint be and the same hereby is extended to 10 days after the determination of this motion; and it is further

ORDERED that personal service of this order to show cause, by serving copies thereof and of the papers on which it is based, shall be sufficient if served at or before 5:00 P.M. on September 13, 1974.

Dated: New York, New York
September 13, 1974

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

- -x

73 Civ. 4133 (RO)

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co. ("Touche Ross"). I make this affidavit in support of the motion by Touche Ross (a) pursuant to Rules 37(b) and (d) of the Federal Rules of Civil Procedure, for an order dismissing the complaint as to each of the plaintiffs, or imposing such other sanctions as the Court shall deem appropriate, by reason of the plaintiffs' failure to comply with the order of this Court of August 16, 1974, and (b) if the complaint not be dismissed as aforesaid, for an order, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, extending defendants' time to answer or make any other motion with respect to the amended complaint until 30 days after plaintiffs have fully responded to Interrogatories dated November 1, 1973 (the "Interrogatories") propounded to them by Touche Ross, and in any event to October 16, 1974.

Although the Interrogatories were propounded to plaintiffs on November 1, 1973, no answers were received until July 15, 1974, when we received in the mail a purported set of answers dated July 11, 1974 ("the Original Answers"). Despite the fact that it thus took 8 1/2 months for plaintiffs to respond to 11 simple and clear Interrogatories, the Original Answers were in large part unresponsive to the Interrogatories. Of that period of 8 1/2 months, plaintiffs were in default for over 5 months, the Interrogatories having been required by Judge Richard Owen to be answered by February 5, 1974.

On August 2, 1974, Touche Ross moved for an order directing plaintiffs to respond to the Interrogatories that they had not answered. On August 16, 1974, Judge Owen granted that motion in all respects and directed that the further answers be served within 20 days, i.e., by September 5, 1974.

On September 6, 1974, we received in the mail, under postmark of September 5, 1974, what purported to be further answers to the Interrogatories by the plaintiffs. As hereafter shown, these further answers fail substantially to comply with this Court's order of August 16, 1974. Further, it now appears that two of those answers were never made by the persons who purported to have made them, namely, plaintiffs Gary Michael and Michael Fagan.

The Interrogatories are addressed almost entirely to the plaintiffs' stockholdings in Teleprompter Corp. ("Teleprompter") and thus to their standing to maintain

this action. The Interrogatories were addressed to all four plaintiffs, namely, Independent Investor Protective League ("IIPL") and the three individual plaintiffs, namely, Gary Michael ("Michael"), Michael Fagan ("Fagan") and Martin F. Randolph, Jr. ("Randolph").

Annexed hereto as Exhibit A is a copy of the amended complaint (the original complaint having been dismissed on December 11, 1973 by Judge Thomas P. Griesa for legal insufficiency); as Exhibit B a copy of the Interrogatories; as Exhibit C a copy of the Original Answers; as Exhibit D those portions of our original motion which discussed the deficiencies in the Original Answers which are still in issue; as Exhibit E our prayer for relief on the original motion which was granted by Judge Owen in toto; as Exhibit F the order of August 16, 1974 of Judge Owen; as Exhibit G the Further Answers of IIPL; as Exhibit H the Further Answers of plaintiff Randolph; as Exhibit I the Further Answers of plaintiff Michael; and as Exhibit J the Further Answers of plaintiff Fagan.

THE COMPLAINT SHOULD BE DISMISSED BECAUSE TWO OF THE PLAINTIFFS DID NOT RESPOND TO THE INTERROGATORIES BY SEPTEMBER 5, 1974 AND A DECEPTIVE DEVICE WAS USED TO MISLEAD DEFENDANTS' COUNSEL TO BELIEVE THAT THEY HAD MADE A TIMELY RESPONSE.

As already noted, on September 6, 1974 we received in the mail, under postmark of September 5, 1974, what purported to be the Further Answers of plaintiffs (Exhibits G-J).

The Further Answers of plaintiff Randolph purported to be executed in California (Exhibit H), the Further Answers

of plaintiff Michael purported to be executed in Vermont (Exhibit I), and the Further Answers of plaintiff Fagan purported to be executed in Connecticut (Exhibit J).

However, in each of those cases, the jurat was incomplete (the respective Counties not being filled in), there was no indication that any of those plaintiffs had signed and sworn to the answers, the respective dates when the answers were allegedly sworn to were not filled in, and there was no notary public stamp or indication of any notary.

Accordingly, on September 6 and 7, 1974, we wrote to plaintiffs' attorneys pointing out these deficiencies and requesting (a) that the originals of the Further Answers be promptly filed in Court as required by Rule 6(c) of the General Rules of this Court -- which requires such filing within 2 days of service, and (b) that we be furnished with the aforesaid information respecting the Further Answers. Copies of those letters are annexed hereto as Exhibit K.

On September 9, 1974, my office received a telephone message from I. Walton Bader, Esq., one of the plaintiffs' attorneys, stating that he would send us copies of the originals "within the next few days." We immediately on September 9 sent him a letter by hand stating that this was unsatisfactory; that if the originals had not been filed we were prepared to examine them that very day; and that if such inspection were not allowed by the end of the day September 9, or the originals were not by then filed in Court, we would assume that plaintiffs' attorneys did not

have the originals and did not have them on September 5, 1974, when they purported to serve the Further Answers by mailing us copies. A copy of that letter is annexed as Exhibit L.

The inspection of the originals was not permitted by the end of the day September 9, 1974 nor were the originals filed in Court by then.

On September 10, 1974, my office received another cryptic message from Mr. Bader with respect to the originals of the Further Answers. I then called Mr. Bader's office and was told that he was not available. Shortly after leaving word that unless Mr. Bader called me promptly I intended to communicate with the Court, Mr. Bader returned my call. I told Mr. Bader that unless we were permitted to inspect the originals that day, September 10, we intended to communicate with the Court on the subject. Mr. Bader assured me that he had the originals but that he did not know where the originals were in his office and that he might have left them at home. Mr. Bader finally said that he would exhibit the originals at 9:00 A.M. on September 11, 1974 in his office to Mr. Nevling of our firm. We sent a confirming letter by hand on September 10 to Mr. Bader, copy of which letter is annexed, as Exhibit M.

Mr. Nevling appeared at Mr. Bader's office on the morning of September 11, 1974. As appears from Mr. Nevling's attached affidavit, Mr. Bader exhibited the original Further Answers executed by IIPL and Randolph, and he then told Mr. Nevling that he had not received executed Further Answers from either Michael or Fagan.

It thus appears that in the cases of Michael and Fagan, what Mr. Bader sent to us on September 5, 1974 were drafts of proposed further answers by those plaintiffs, and that those drafts were sent to us (and we believe to other counsel) in an effort to mislead us (and them) into believing that those plaintiffs had made timely responses to the Interrogatories as ordered by the Court on August 16, 1974.

There has thus been a failure to-comply with the order of August 16, 1974 which directed the service of sworn answers by all plaintiffs by September 5, 1974 and plaintiffs' attorneys have been guilty of a deceptive practice in mailing copies of unsworn drafts to conceal the fact that they had not received sworn answers.

For those reasons, the complaint should be dismissed as to all plaintiffs.

EVEN IF THE COMPLAINT IS NOT DISMISSED FOR THE FOREGOING REASONS, IT SHOULD BE DISMISSED FOR PLAINTIFFS' FAILURE TO COMPLY WITH THE ORDER OF AUGUST 16, 1974 IN OTHER RESPECTS.

Plaintiff IIPL has failed to comply with the Court's order of August 16, 1974 by failing fully to answer Interrogatory 5.

Plaintiff Randolph has failed to comply with said order by failing fully to answer Interrogatory 8.

The unsworn drafts of Further Answers by plaintiffs Michael and Fagan also fail to comply with the Court's order of August 16, 1974, but it is unnecessary to consider them at this time because it now appears that those plaintiffs

did not furnish any sworn answers to the Interrogatories.

1

The failure of plaintiff IIPL fully to respond to Interrogatory 5

Interrogatory 4 asked for the names of the members of IIPL who owned any shares of stock of Teleprompter during any portion of the period of time covered by the complaint. In response to Interrogatory 4, the original Answers listed 8 names. In addition to plaintiffs Fagan, Michael and Randolph, they were Robert W. Stoddard ("Stoddard"), John C. Bernius ("Bernius"), Sylvia K. French ("French"), G. Dixon Mahon ("Mahon") and Rose L. Gross ("Gross") (Exhibit C. pp. 2-3). The Further Answers of IIPL list one other name, namely, Sadie Mosner ("Mosner") (Exhibit G, p. 2).

Interrogatory 5 then asked the following (Exhibit B, p. 2:

> "With respect to each member listed in response to Interrogatory 4, state (a)(i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b)(i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c)(i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such sale, and (iii) the price per share received on each such date, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held."

The Original Answer was as follows (Exhibit C, p. 4):

> "The information sought in this Interrogatory is set forth, in detail, in PARAGRAPH 'FOURTH' of the Amended Complaint. The information with respect to Plaintiffs' [sic] RANDOLPH, MICHAEL and FAGAN is given in subsequent Answers."

We defer consideration of plaintiff Randolph until consideration of his Further Answers, and consider here only members of IIPL other than plaintiffs who allegedly owned Teleprompter shares.

Our objection to the Original Answer as to those others was twofold, namely (1) that an answer by cross-reference to paragraph Fourth of the amended complaint was improper, and (2) that even if one were to consider paragraph Fourth, the response would be wholly insufficient (Exhibit D, p. 7).

Thus the amended complaint in paragraph Fourth alleges as follows in pertinent part (Exhibit A, pp. 2-3):

> "FOURTH: The following table sets forth the transactions made by the members of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE in TELEPROMPTER CORP. stock.

DATE OF TRANSACTION	NAME OF MEMBER	SHARES BOUGHT OR SOLD	PURCHASE OR SALES PRICE	NUMBER OF SHARES
		* * * *		
Oct. 1971	ROSE L. GROSS	bought	$583.01	8 (now 32)
May 16,1972	ROSE L. GROSS	bought	$1209.27	33
May 13,1972	ROSE L. GROSS	bought	$584.77	15
Nov.13,1972	ROSE L. GROSS	bought	$791.72	25
Dec.13,1972	ROSE L. GROSS	bought	$366.50	10
Dec.29,1971	SYLVIA K. FRENCH	bought	28 1/2 per share	50
March 24,1972	SYLVIA K. FRENCH	bought	23 1/2 per share	150
Aug.10,1973	JOHN C. BERNIUS	bought	13 1/2 per share	100
Sept.5,1973	ROBERT W. STODDARD	bought	8 1/2 per share	100
Jan.8,1973	G. DIXON MAHON	bought	900 shares $30.205 per share	900
Nov.21,1973	G. DIXON MAHON	sold	$4.125 per share	900 "

We pointed out on our original motion that this listing did not give all the required information. We thus stated

(Exhibit D, p. 7):

> "Moreover, even if one were to consider the cross-reference to paragraph Fourth of the amended complaint, the response would be wholly insufficient for the following reasons:
>
> "(a) As to Gross, French, Bernius and Stoddard, paragraph Fourth only sets forth the dates on which they purportedly bought shares of stock of Teleprompter, the number of shares purchased on each date and the price paid. None of the other information called for by Interrogatory 5 is given, namely, the required information as to sales of Teleprompter stock by such persons, the number of shares presently owned by each such person and the name in which the shares were or are held. Even as to purchases of Teleprompter stock, paragraph Fourth does not show whether there were any purchases other than those listed.
>
> "(b) As to Mahon, paragraph Fourth sets forth the dates on which he purportedly purchased and sold shares of stock of Teleprompter, the number of shares purchased and sold, and the price paid and received. However, there is nothing to show whether there were any other purchases and sales by Mahon (and if so, the required information with respect thereto), the number of shares of Teleprompter presently owned by him or the name in which the shares were or are held by him -- all as required by Interrogatory 5."

The Court then directed "the plaintiff IIPL to respond, separately and fully in writing under oath, to Interrogatory 5..." (Exhibits E and F).

The <u>Further Answers</u> of IIPL as to Interrogatory 5 are as follows in pertinent part (Exhibit G, pp. 3-4):

"NAME OF MEMBER	DATE OF PURCHASE	NO. OF SHARES PURCHASED	PRICE PER SHARE PAID
SADIE MOSNER	Jan.,1973	25	25.00
ROSE L. GROSS	Oct.,1971	8 (now 32)	72.80
"	May 16,1972	33	36.60
"	May 13,1972	50	34.50
G. DIXON MAHON	Jan.15,1973	900	30.205
ROBERT W. STODDARD	Sept.5,1973	100	8.50
JOHN C. BERNIUS	Aug.10,1973	100	13.50
SYLVIA K. FRENCH	March 24,1972	150	28.50
	Dec. 28,1971	50	28.50

* * * *

NAME OF MEMBER	DATE OF SALE	NO. OF SHARES SOLD	SELLING PRICE
G. DIXON MAHON	Nov.29,1973	900	4.125 "

* * * *

As can readily be seen, all that IIPL has done is copy into the Further Answers what appears in paragraph Fourth of the amended complaint. It has supplied none of the information which we pointed out was missing from the Original Answers even if said paragraph Fourth were to be considered, and which information the Court ordered IIPL to supply.

Thus, the very same deficiencies as to Gross, French, Bernius and Stoddard exist in the Further Answers as existed before (and precisely the same deficiencies exist as to the new name that has been added, namely, Mosner); and the very same deficiencies exist as heretofore with respect to Mahon (see supra).

Pursuant to Rule 37(a)(3), these evasive and incomplete answers are to be treated as a failure to answer. Indeed, plaintiff IIPL has simply ignored the Court's order of August 16, 1974 insofar as it applied to Interrogatory 5

and the complaint should be dismissed as to IIPL.

2

The failure of plaintiff Randolph fully to respond to Interrogatory 8

Interrogatory 8 asked the following (Exhibit B, p.3):

> "With respect to Randolph, state (a)(i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b)(i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c)(i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held."

Randolph did not originally answer Interrogatory 8 at all. The Original Answer was given by IIPL and was as follows (Exhibit C, p. 5):

> "Information with respect to the Plaintiff RANDOLPH is set forth in full in PARAGRAPH 'FOURTH' of the Amended Complaint."

Here again our objection (in addition to the fact that no answer had been made at all by Randolph) was two-fold, namely (a) that an answer by cross-reference to paragraph Fourth of the amended complaint was improper, and (b) that even if one were to consider paragraph Fourth, the response would be wholly insufficient (Exhibit D, pp. 8-10).

Thus, the amended complaint in paragraph Fourth alleged as follows in pertinent part (Exhibit A, pp. 2-3):

"FOURTH: The following table sets forth the transactions made by the members of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE in TELEPROMPTER CORP. stock.

DATE OF TRANSACTION	NAME OF MEMBER	SHARES BOUGHT OR SOLD	PURCHASE OR SALES PRICE	NUMBER OF SHARES
February 1972	MARTIN F. RANDOLPH, JR.	200 bought	9 1/4 per share	200
May 1,1973	MARTIN F. RANDOLPH, JR.	bought	20 1/4 per share	400
August 10, 1973	MARTIN F. RANDOLPH, JR.	sold	13 1/2 per share	400
Sept.5,1973	MARTIN F. RANDOLPH, JR.	sold	9 1/2 per share	400
Nov.12,1973	MARTIN F. RANDOLPH, JR.	sold	4 3/4 per share	200

* * * * * "

We pointed out in our original motion that these allegations did not give all the required information. We thus stated (Exhibit D, pp. 9-10):

> "Even if one were to consider the cross-reference, the response would be insufficient. Paragraph Fourth of the Amended complaint sets forth the dates on which plaintiff Randolph purportedly purchased and sold shares of Teleprompter, the number of shares purchased and sold, and the price paid and received. However, there is nothing to show whether there were any other purchases and sales by Randolph (and if so, the information respecting them), the number of shares of Teleprompter presently owned by him, or the name in which the shares were or are held by him -- all as required by Interrogatory 8."

The Court then directed "the plaintiff Martin F. Randolph Jr. to respond, separately and fully in writing under oath ... to Interrogatory 8" (Exhibits E and F).

The Further Answers, now purportedly given by Randolph himself, are as follows (Exhibit H, pp. 2-3):

"Answer: The following sets forth the purchase information with respect to Teleprompter Corp.:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
February 1972	25 (became 100 shares by reason of subsequent stock split) -	140-3/4
January 8,1973	100	29-7/8
January 15,1973	200	28-3/8
February, 1973	200	24-1/2

The following sets forth sales information:

Date of Sale	No. of Shares Sold	Selling Price Per Share
August 10,1973	400	13-1/2
September 5,1973	400	9-1/2
November 12,1973	200	4-3/4

I do not have the actual purchase and sales records in my possession at the present time but the above represents my best recollection. The purchases and sales were done through Fahnstock & Company of New York City, and Dean Whitter & Co., Inc. of New York City. I have requested the brokerage records from these firms and will supply these in due course."

These Further Answers, as in the case of the Original Answers, do not show whether there were any other purchases and sales by Randolph (a subject of some importance as the following discussion shows); if there were such other purchases and sales, the required information respecting them; the number of shares, if any, of Teleprompter presently owned by him; or the name in which the shares were or are held by him - all as required by Interrogatory 8. Pursuant to Rule 37(a)(3), these evasive and incomplete answers are to be treated as a failure to answer.

There are additional reasons why Randolph has failed to comply with the order of the Court of August 16, 1974, as follows:

1. Randolph says that the information he is giving is a matter of recollection (even as to precise dates) and that he does not have records to support his assertions. He says that he is trying to secure such records, and will subsequently supply them. Randolph has now had almost one year - since November 1, 1973 - to secure such records and to supply the information requested, and he has failed to do so. His answer is in effect a statement that he does not really know when he purchased and sold Teleprompter stock and his Further Answers have simply been asserted in effect "on information and belief", subject to subsequent revision, to prevent a default. His answer is in this respect also incomplete and evasive, and thus to be treated as a failure to answer within the meaning of Rule 37(a)(3).

2. The evasive and worthless character of Randolph's answer is emphasized by the fact that he claims to have purchased 600 shares of Teleprompter stock and to have sold 1,000 shares. There is no explanation of how he came to sell more than he purchased. This too emphasizes that Randolph has given a wholly evasive response that must be treated as a nullity under Rule 37(a)(3).

3. We now have had at least two different and conflicting versions of Randolph's purchases and sales of Teleprompter stock. The amended complaint alleged that his purchases and sales were as follows (Exhibit A, p.2):

Feb. 1972	bought	200 shares	at	9 1/4	per share
May 1, 1973	bought	400 shares	at	20 1/4	per share
		600			
Aug.10,1973	sold	400 shares	at	13 1/2	per share
Sept.5,1973	sold	400 shares	at	9 1/2	per share
Nov.12,1973	sold	200 shares	at	4 3/4	per share
		1,000			

The Further Answers state that his purchases and sales were as follows (Exhibit H, pp. 2-3):

Feb. 1972	bought	100 shares (originally 25 before stock split)	at	140 3/4	per share
Jan. 8,1973	bought	100 shares	at	29 7/8	per share
Jan.15,1973	bought	200 shares	at	28 3/8	per share
Feb. 1973	bought	200 shares	at	24 1/2	per share
		600			
Aug. 10,1973	sold	400 shares	at	13 1/2	per share
Sept. 5,1973	sold	400 shares	at	9 1/2	per share
Nov. 12,1973	sold	200 shares	at	4 3/4	per share
		1,000			

These various versions of the simple and basic facts relating to Randolph's shareholdings in Teleprompter are irreconcilably conflicting and, as already noted, to be treated as no answers at all under Rule 37(a)(3). Randolph has now had almost a year to supply correct information on these primary facts on which his standing in this Court depends, and it is clear that the complaint should now be dismissed as to him.

THE MOTION FOR AN EXTENSION OF TIME TO ANSWER OR TO MAKE ANY OTHER MOTION WITH RESPECT TO THE AMENDED COMPLAINT SHOULD BE GRANTED

The answers to the Interrogatories were to be available for any motion defendants might wish to make addressed to the amended complaint. Judge Owen accordingly extended

defendants' time to answer or to move to dismiss the amended complaint to 30 days after answers to the Interrogatories were served. When the Original Answers were served, such time was extended by stipulation to September 16, 1974.

Judge Owen on August 16, 1974 found that the Original Answers were insufficient and directed the service of further answers by September 5, 1974. Had proper further answers then been served, no further extension of time to answer or move with respect to the amended complaint would have been necessary. However, as noted above, proper further answers have not been served.

Since Judge Owen has already determined that defendants are entitled to full responses to the Interrogatories in connection with any answer, or any motion addressed to the amended complaint, and that defendants should have 30 days after such responses are received to file such answer or make such motion, the motion for an extension of time for all defendants to answer or move with respect to the amended complaint should be granted.

THE ORDER TO SHOW CAUSE SHOULD BE GRANTED

An order to show cause is requested because defendants' time to answer or move with respect to the amended complaint will expire on September 16, 1974, before this motion can be heard in normal course. An extension of time is therefore sought until the determination of the motion so that there will be no default in the interim. There has been no prior application for such relief. The prior orders and stipula-

tions extending defendants' time have been referred to at pp.15-16 supra.

Sworn to before me this
13th day of September, 1974.

Lawrence R. Eno
LAWRENCE R. ENO

Evelyn Messinger
Notary Public

EVELYN MESSINGER
NOTARY PUBLIC, State of New York
No. 31-7912345
Qualified in New York County
Commission Expires March 30, 1978

* * * *

[Exhibits A through F to the preceding affidavit are not reproduced here. Other copies of the same documents appear in this Appendix as follows:

Exhibit A	-	Amended Complaint	pp. 386-394
Exhibit B	-	Defendant Touche Ross & Co.'s Interrogatories to Plaintiffs (First Set)	pp. 378-382
Exhibit C	-	Plaintiffs' Answers to Interrogatories of the Defendant Touche, Ross & Co. (First Set)	pp. 417-421
Exhibit D	-	Excerpts from Affidavit in Support of Motion to Compel	pp. 402-416
Exhibit E	-	Prayer for Relief from Affidavit in Support of Motion to Compel	p. 402-416
Exhibit F	-	Order of Judge Owen dated August 16, 1974 Granting Motion	p.454].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INDEPENDENT INVESTOR PROTECTIVE LEAGUE,
ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

CIVIL ACTION
73 Civil 4133
(RO)

----------x

FURTHER ANSWERS TO FIRST
INTERROGATORIES OF THE DEFENDANT
TOUCHE, ROSS & CO.

The following further Answers are submitted to the First Interrogatories of the Defendant TOUCHE, ROSS & CO. These Answers are alleged on information and belief and are based upon the records kept by the INDEPENDENT INVESTOR PROTECTIVE LEAGUE:

2. State the names and addresses of the members of the IIPL.

Answer: The IIPL keeps a list of its' Members on a set of index cards. Submitted with the Answers to these Interrogatories, are photocopies of the index cards showing

EXHIBIT G

the Names and Addresses of the present Members of the IIPL.

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

Answer: In addition to the Names and Addresses previously given, the following Name and Address is to be added:

SADIE MOSNER
3133 Brighton 7th Street
Brooklyn, N. Y. 11235

5. With respect to each member listed in response to Interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by

each such member, and (e) in each instance the name in which the shares were or are held.

Answer: (See below)

NAME OF MEMBER	DATE OF PURCHASE	NO. OF SHARES PURCHASED	PRICE PER SHARE PAID
SADIE MOSHER	Jan., 1973	25	25.00
ROSE L. GROSS	Oct., 1971	8 (now 32)	72.80
"	May 16, 1972	33	36.60
"	May 13, 1972	50	34.50
G. DIXON MAHON	Jan. 15, 1973	900	30.205
ROBERT W. STODDARD	Sept. 5, 1973	100	8.50
JOHN C. DERNIUS	Aug. 10, 1973	100	13.50
SYLVIA K. FRENCH	March 24, 1972	150	28.50
	Dec. 28, 1971	50	28.50
MICHAEL FAGAN	March 10, 1972	50	29-7/8
GARY MICHAEL	April 1, 1972	100	30.00
MARTIN F. RANDOLPH, JR.	Feb., 1972	25 (now 100)	140-3/4
	Jan. 8, 1973	100	29-7/8
	Jan. 15, 1973	200	28-3/8
	Feb., 1973	200	24-1/2

NAME OF MEMBER	DATE OF SALE	NO. OF SHARES SOLD	SELLING PRICE
MARTIN F. RANDOLPH, JR.	Aug. 10, 1973	400	13-1/2
	Sept. 5, 1973	400	9-1/2
	Nov. 12, 1973	200	4-3/4
G. DIXON MAHON	Nov. 29, 1973	900	4.125

Dated: September 5, 1974

Yours, etc.

BADER and BADER
Attorneys for the Plaintiffs

TO: ALL OF THE ATTORNEYS AFFECTED BY SAME

By: _____
I. Walton Bader

274 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6060

V E R I F I C A T I O N :

STATE OF: NEW YORK)
) ss.;
COUNTY OF: NEW YORK)

MERRILL SANDS, being duly sworn, deposes and says that he is the Secretary of the Independent Investor Protective League, an Unincorporated Association; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein to be alleged on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE ME

THIS _____ DAY OF

SEPTEMBER, 1974.

(S) Merrill Sands
Merrill Sands

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on September 5, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MARTIN F. RANDOLPH, JR.

The Plaintiff MARTIN F. RANDOLPH, JR. submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is 4441-1/2 51st Street, San Diego, California 92115. I am a motel accountant.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

EXHIBIT H

Answer: I have no other address or occupation other than that listed in Answer to Interrogatory "6" hereinabove.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp.:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
February 1972	25 (became 100 shares by reason of subsequent stock split)	140-3/4
January 8, 1973	100	29-7/8
January 15, 1973	200	28-3/8
February, 1973	200	24-1/2

The following sets forth sales information:

Date of Sale	No. of Shares Sold	Selling Price Per Share
August 10, 1973	400	13-1/2
September 5, 1973	400	9-1/2
November 12, 1973	200	4-3/4

I do not have the actual purchase and sales records in my possession at the present time but the above represents my best recollection. The purchases and sales were done through Fahnstock & Company of New York City, and Dean Whitter & Co., Inc. of New York City. I have requested the brokerage records from these firms and will supply these in due course.

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____
I. Walton Bader
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-6860

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: CALIFORNIA)
) ss.:
COUNTY OF: _____)

MARTIN F. RANDOLPH, JR., being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE ME
THIS _____ DAY
OF _____, 1974.

_____
Martin F. Randolph, Jr.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify that on _____, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

_____
I. Walton Bader

Model 7/5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, GARY MICHAEL

The Plaintiff GARY MICHAEL submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My address is 100 Chalet Village, Stockbridge, Vermont. I am a law student.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those

EXHIBIT I

set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that set forth hereinabove.

9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth purchase information with respect to my holdings of stock of Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
April 1, 1972	100	30

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____

I. Walton Bader
274 Madison Avenue
New York, N.Y. 10016
Telephone (212) LE 1-0000

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: VERMONT)
) ss.:
COUNTY OF: _____)

GARY MICHAEL, being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes is to be true.

SWORN TO BEFORE ME

THIS _____ DAY OF

_____, 1974.

_____
Gary Michael

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify under penalties of perjury, that on _____, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

_____
I. Walton Bader.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MICHAEL FAGAN

The Plaintiff MICHAEL FAGAN submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is Watson Lane, Danbury, Connecticut 06810. I am a conductor, employed by the Penn Central Railroad.

7. (a) State whether any of Randolph, Michael and

EXHIBIT J

Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that listed above.

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	50	29-7/8

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plfs.

By: _____
I. Walton Bader
274 Madison Avenue
New York, N. Y. 100[illegible]
Telephone: (21[illegible]) LE [illegible]-
[illegible]

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: CONNECTICUT)
) ss.:
COUNTY OF: _____)

MICHAEL FAGAN, being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE ME

THIS _____DAY OF

_____, 1974.

_____
Michael Fagan

_____
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on _____, 1974, I mailed a copy of the within document to all of the Attorneys for the Defendants.

_____
I. Walton Bader.

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
MAX FREUND
SYDNEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSINY
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
WILLIAM W. SOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOLTZ
SAMUEL H. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MAL L. BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. HADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMAN
1896-1973

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

September 6, 1974

I. Walton Bader, Esq.,
Bader & Bader,
274 Madison Avenue,
New York, New York 10016

Re: Independent Investor Protective League et al.
v. Teleprompter et al.

Dear Mr. Bader:

We today received in the mail, under postmark of September 5, 1974, what purport to be answers to Touche Ross' interrogatories by plaintiffs. Would you please advise whether the original answers have been filed in Court as required by Rule 6(c) of the General Rules of the Court. If not, we request that the originals be filed immediately.

The copies of the purported answers we received are incomplete in the following respects:

Michael Fagan. Nothing indicates whether you as attorney signed the answers or whether Mr. Fagan individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in Connecticut is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Fagan signed the answers, (b) whether Mr. Fagan swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

EXHIBIT K

I. Walton Bader, Esq. September 6, 1974

Martin F. Randolph, Jr. Nothing indicates whether you as attorney signed the answers or whether Mr. Randolph individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in California is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Randolph signed the answers, (b) whether Mr. R ndolph swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

Gary Michael. Nothing indicates whether you as attorney signed the answers or whether Mr. Michael individually signed the answers. Nothing indicates whether the answers were sworn to, or, if sworn to, where and when. The jurat is blank insofar as the County in Vermont is concerned and no notary public's name appears on the copy. This despite the fact that the copy purports to be a xerox of the original. We therefore request that you promptly inform us (a) whether you and Mr. Michael signed the answers, (b) whether Mr. Michael swore to the answers, where he did so, the date he did so and the name of the notary before whom he appeared.

IIPL. While there is an indication that Mr. Sands swore to these answers, there is nothing to indicate whether you did so, or when Mr. Sands swore to the answers or the name of the notary before whom he did so. Would you please therefore supply this information.

The foregoing does not relate to any substantive objections that we may have to the answers but simply to the question of whether the answers were properly executed by the plaintiffs, if they were executed at all.

Yours very truly,

Lawrence R. Eno

LAWRENCE R. ENO

LRE/SGS

cc: All Counsel

10M-3-74 T.C.

537

COPY

RCKPF&E

The person mailing or delivering this letter must fill out the following:

DATE 9/7 1974

MAILED BY RDE

DELIVERED BY

AT A.M. P.M.

There must be no exception to this rule.

September 7, 1974

I. Walton Bader, Esq.
Bader & Bader
274 Madison Avenue
New York, New York 10016

Re: Independent Investor Protective League et al. v. Teleprompter et al.

Dear Mr. Bader:

In my letter of September 6, 1974, there is an error on page 2 insofar as IIPL is concerned. The inquiry respecting you should be whether you signed the answers rather than swore to them.

Yours very truly,

LAWRENCE R. ENO

LRE/rn

92310-018

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
MAX FREUND
STANLEY M. KAYE
HILLARD J. HILL
WALTER J. PETSCHEK
EDWARD F. ROSINY
AMBROSE DOGAGOW
LAWRENCE J. LEWIS
LAWRENCE H. ENO
MURRAY COHEN
WILLIAM H. GOLUB
MARVIN MAXWELL
ANDREW J. SCHOEN
JACK E. STANTON
ROLD GRABLOW
MAURICE H. GOETZ
SAMUEL H. LINDENBAUM
HUBERT S. ROLLSON
ARNOLD I. ROSS
GODFREY L. SHOON
LAWRENCE J. BUTTENWIESER
EUGENE L. VOGEL
EDWARD WALDIN
MARC L. BARRISH
MILTON BURAK
EDWARD H. COHEN
ROBERT SCHMALL
ARTHUR I. HADDEL
JEFFREY JON NASON
JOHN S. FRANKLIN
JOSEPH GOLDERMAN

SAMUEL I. ROSENMAN
1886-1972

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

BY HAND

September 9, 1974

I. Walton Bader, Esq.,
Bader & Bader,
274 Madison Avenue,
New York, New York 10016

Re: Independent Investor Protective League et al.
v. Teleprompter et al.

Dear Mr. Bader:

We today received a telephone message from you in response to my letters of September 5 and 7 in which you say that you will send us copies of the original interrogatory answers "within the next few days." This is unsatisfactory to us. Mr. Nevling is prepared to come to your office immediately to inspect the originals, if they have not already been filed. If that opportunity is not afforded by the end of today or the originals are not filed by the end of today pursuant to Rule 6(c) of the General Rules of the Court, we shall assume that you do not have the originals, and did not have them on September 5, 1974, and shall proceed accordingly.

Yours very truly,

LRE/LMW

cc: All Counsel

EXHIBIT L

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
MAX FREUND
STONEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
EDWARD F. ROSINY
ANBHOSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
WILLIAM W. GOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
MAURICE M. GOETZ
SAMUEL H. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE H. GUTTENWIESER
EUGENE L. VOGEL
GERALD MALPIN
MALL BARASCH
M. PAUL RUBAK
EDWARD M. COHEN
FLORA SCHWALL
PETER F. NADEL
LEE H. ROBINSON
FRANK H. ROSINY
JOSEPH ZUCKERMAN

SAMUEL I. ROSENMAN
(1905-1973)

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"
TELEX 12-5745

BY HAND

September 10, 1974

I. Walton Bader, Esq.
Bader and Bader
274 Madison Avenue
New York, New York 10016

Re: Independent Investor Protective League
v. Telepromoter

Dear Mr. Bader:

This will confirm your statement to me that at 9:00 A.M. tomorrow in your office you will exhibit to Mr. Nevling of our office the originals of the purported further answers of plaintiffs Martin F. Randolph, Jr., Gary Michael and Michael Fagan, as well as the original further answers of IIPL.

Please be further advised that we are requesting Judge Owen to conduct an immediate investigation into the matter of these answers if the originals are not exhibited to us at that time and place.

Very truly yours,

Lawrence R. Eno

Lawrence R. Eno

LRE/mk

cc: All Counsel

EXHIBIT M

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,	:	
Plaintiffs,	:	73 Civ. 4133 (RO)
-against-	:	
TELEPROMPTER CORP. et al.,	:	AFFIDAVIT
Defendants.	:	

- - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JAMES K. NEVLING, JR., being duly sworn, deposes and says:

I am an attorney associated with the law firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co. ("Touche Ross").

On September 11, 1974, I went to the offices of Bader & Bader, attorneys for plaintiffs, in order to examine the signed originals of each plaintiff's further answers to the Interrogatories. I there met with I. Walton Bader, Esq., a member of the firm, at about 9:10 A.M. on September 11. At that time he showed me a ribbon copy of the further interrogatory answers of plaintiff Independent Investor Protective League, which appeared to have been signed and sworn to by one Merrill Sands before Mr. Bader himself as notary public. He also showed me the ribbon copy of the further answers of plaintiff Martin F. Randolph, Jr., which appeared to have been signed by Mr. Randolph before a notary public in San Diego County, California. (A copy of the signed ribbon copy of the further answers of plaintiff

Randolph, as provided to me by Mr. Bader at that time, is annexed hereto as Exhibit 1; a copy of the signature page of the signed ribbon copy of the further answers of plaintiff Independent Investor Protective League is annexed hereto as Exhibit 2). From the fact that these signed ribbon copies were present in the offices of Bader & Bader on September 11, 1974, it was evident that they had not yet been filed with the Court.

When I asked to see the further interrogatory answers of the remaining plaintiffs (Michael Fagan and Gary Michael), Mr. Bader stated that he would explain about the further answers of those plaintiffs. He handed me a notice of motion returnable September 20, 1974 to which was attached an affirmation signed by Mr. Bader. In the affirmation Mr. Bader represented that:

> "I have not yet received answers from the defendants [sic] FAGAN or MICHAEL.... I would expect that these answers will be received momentarily. However, since they have not and the time has passed for compliance with the Order of this Court...."

At no time while I was in his office on September 11, 1974 did Mr. Bader show me or offer to show me a signed copy of the further interrogatory answers of either Michael Fagan or Gary Michael.

At the same time that he handed me the notice of motion and affirmation, Mr. Bader also delivered to me a notice of taking testimony and a set of interrogatories, both addressed to Touche Ross. Mr. Bader threatened that he would not give any extensions of time to Touche Ross, either

to answer or move with respect to the complaint, to answer plaintiffs' motion or interrogatories, or to produce witnesses for deposition, and that he expected strict compliance with his various discovery devices. He said that these strictures applied only to Touche Ross, and that other defendants would be granted extensions of time on request. He suggested, however, that if Touche Ross would give him additional time to provide further answers to the Interrogatories, he would adjourn the various discovery proceedings until determination of the validity of the complaint, and also offered to give us additional time to answer or move.

James K. Nevling, Jr.
JAMES K. NEVLING, JR.

Sworn to before me this
13 day of September, 1974.

Evelyn Messinger
Notary Public

EVELYN MESSINGER
NOTARY PUBLIC, State of New York
No. 31-7912345
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL., Plaintiffs,	CIVIL ACTION 73 CIVIL 4133 (RO)
- against -	
TELEPROMPTER CORP., ET AL., Defendants.	

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MARTIN F. RANDOLPH, JR.

The Plaintiff MARTIN F. RANDOLPH, JR. submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is 4441-1/2 51st Street, San Diego, California 92115. I am a motel accountant.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

EXHIBIT 1

Answer: I have no other address or occupation other than that listed in Answer to Interrogatory "6" hereinabove.

8. With respect to Randolph, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase. (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp.:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
February 1972	25 (became 100 shares by reason of subsequent stock split)	140-3/4
January 8, 1973	100	29-7/8
January 15, 1973	200	28-3/8
February, 1973	200	24-1/2

The following sets forth sales information:

Date of Sale	No. of Shares Sold	Selling Price Per Share
August 10, 1973	400	13-1/2
September 5, 1973	400	9-1/2
November 12, 1973	200	4-3/4

I do not have the actual purchase and sales records in my possession at the present time but the above represents my best recollection. The purchases and sales were done through Fahnstock & Company of New York City, and Dean Whitter & Co., Inc. of New York City. I have requested the brokerage records from these firms and will supply these in due course.

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiffs

By: _____
I. Walton Bader
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-6800

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: CALIFORNIA)
) ss.:
COUNTY OF: SAN DIEGO)

MARTIN F. RANDOLPH, JR., being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

Martin F. Randolph, Jr.
Martin F. Randolph, Jr.

SWORN TO BEFORE ME
THIS 3rd DAY
OF September, 1974.

OFFICIAL SEAL
DIANE McCREEDY
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires May 29, 1978

Diane McCreedy

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify that on September 19th, 1974, I mailed a copy of the within document to all of the attorneys affected by same, except Messrs. Posenman Colin.

I. Walton Bader
I. Walton Bader

NAME OF MEMBER	DATE OF SALE	NO. OF SHARES SOLD	SELLING PRICE
MARTIN F. RANDOLPH, JR.	Aug. 10, 1973	400	13-1/2
	Sept. 5, 1973	400	9-1/2
	Nov. 12, 1973	200	4-3/4
G. DIXON MAHON	Nov. 29, 1973	900	4.125

Dated: September 5, 1974

Yours, etc.

BADER and BADER
Attorneys for the Plaintiffs

TO: ALL OF THE ATTORNEYS AFFECTED BY SAME

By: _____
I. Walton Bader

274 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6860

V E R I F I C A T I O N :

STATE OF: NEW YORK)
) ss.;
COUNTY OF: NEW YORK)

MERRILL SANDS, being duly sworn, deposes and says that he is the Secretary of the Independent Investor Protective League, an Unincorporated Association; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein to be alleged on information and belief and as to those matters he believes it to be true.

SWORN TO BEFORE ME
THIS 5th DAY OF
SEPTEMBER, 1974.

_____
Merrill Sands

_____
NOTARY PUBLIC.

I. WALTON BADER
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in New York County
Commission Expires March 30, 1976

EXHIBIT-2

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury, that on September 5, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al., Plaintiffs, -against- TELEPROMPTER CORP. et al., Defendants.	73 CIV. 4133(RO) AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

JAMES K. NEVLING, JR., being duly sworn deposes and says:

I am a resident of the State of New York, am over eighteen years of age and am not a party to this action.

On September 13, 1974 I served the annexed order to show cause and the papers on which it is based on plaintiffs' attorneys at their offices at 274 Madison Avenue, New York, New York at about 3:30 P.M. by leaving a true copy thereof in a conspicuous place in said offices as follows:

When I arrived at those offices at about 2:50 P.M., the only person present in the outer room of said offices was Ms. Dorothy Blacker, who informed me that she would not accept or acknowledge service of the order to show cause. She denied that she had any connection with the firm of Bader & Bader or with I. Walton Bader, Esq., the only member of the firm who has been involved in this action to my knowledge, and denied that she was authorized to accept service of process in their behalf. In response to my questions Ms. Blacker stated that neither I. Walton Bader nor anyone else connected with the firm of Bader & Bader was present in the office. I independently verified this statement.

I waited at the offices until 3:30 P.M. but no one connected with the firm of Bader & Bader arrived. I was then informed by Ms. Blacker, in response to further questions, that if I left a copy of the order to show cause in an in-box on the desk of I. Walton Bader's secretary, he would see it when he came to the office. I then left a true and complete copy of the annexed order to show cause and the papers on which it is based in said in-box. I told Ms. Blacker that the paper I was leaving was an order to show cause, and that a response thereto was required on September 20, 1974.

Although service of the order to show cause was not required to be made on attorneys for other defendants by 5:00 P.M. on September 13, 1974, I nevertheless called each of them between 4:00 P.M. and 4:15 P.M. on September 13, 1974 and they each stated that, if the annexed order to show cause was required to be served on them by such time, they each waived service thereof by 5:00 P.M. on September 13, 1974.

James K. Nevling, Jr.

James K. Nevling, Jr.

Sworn to before me this
16th day of September, 1974.

Helen Reichhold

Notary Public

HELEN REICHHOLD
Notary Public, State of New York
No. 9[illegible]21551
Qualified in New York County
Commission Expires March 30, 197[illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al., Plaintiffs, - against - TELEPROMPTER CORP., et al., Defendants.	73 Civ. 4133 (RO) SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION BY DEFENDANT TOUCHE ROSS & CO. TO DISMISS THE AMENDED COMPLAINT PURSUANT TO RULE 37

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

1. I submit this affidavit to supplement my moving affidavit of September 13, 1974 on the motion of defendant Touche Ross & Co. ("Touche Ross") to dismiss the amended complaint pursuant to Rules 37(b) and (d) of the Federal Rules of Civil Procedure.

2. As my moving affidavit shows, plaintiffs' attorneys, on September 5, 1974, served by mail unsigned and unsworn answers to Touche Ross' Interrogatories by the individual plaintiffs. On September 11, 1974, plaintiffs' attorneys exhibited to us a signed original answer of plaintiff Martin F. Randolph, Jr. ("Randolph") sworn to September 3, 1974. We assumed that such answer had been in the possession of plaintiffs' attorneys on September 5, 1974 and that the only default was in sending to us an unconformed copy -- a default we were willing to overlook. Accordingly, in my moving affidavit, I dealt with Randolph's answers as though they had been timely, but were unresponsive.

It now appears from a letter to the Court dated September 11, 1974 (received by us September 13, 1974) sent by one of plaintiff's attorneys, I. Walton Bader, Esq., that Randolph's signed and sworn answers may not have been in the possession of plaintiff's attorneys on September 5, 1974 and there is no proof that they were. A copy of that letter is annexed hereto.

In the letter of September 11, 1974, Mr. Bader says that after he left his office the afternoon of September 5, 1974 to go to St. Louis, he was told on that day that during his absence Randolph's sworn answers had arrived. It does not appear by whom he was so informed. Mr. Bader also says that he was in St. Louis on September 6 and September 7 (and apparently was not in his office on Sunday, September 8, since he says he first learned of our September 6 letter on September 9), that he was in Washington, D. C. on September 9 and out on depositions on September 10 until about 6:00 P.M., when he returned to his office.

If Mr. Bader's statements are correct, then the earliest that Mr. Bader could have seen Randolph's sworn answers was at 6:00 P.M. on September 10, 1974. Indeed, Mr. Bader claims in his letter (incorrectly) that on September 9 and September 10, he told my office that he was still awaiting receipt of the sworn answers, including Randolph's.

There is no proof whatsoever that Randolph's sworn answers were received by September 5, 1974, and accordingly

on this motion he is to be treated in the same category as plaintiffs Michael and Fagan. As we also show in the moving affidavit, even if this were not the case the amended complaint should be dismissed as to Randolph because his answers were unresponsive, evasive, incomplete and conflicting.

Plaintiffs have moved to open the default with respect to Michael and Fagan. That motion will be heard simultaneously with the instant motion. Our papers opposing plaintiffs' motion will contain further analysis and refutation of Mr. Bader's letter of September 11, 1974 which we request also be considered on the instant motion. It may, however, be noted that in an affirmation dated September 11, 1974 on plaintiffs' said motion, Mr. Bader, while claiming to have made timely service of the answers of IIPL, makes no such claim with respect to the answers of Randolph.

Lawrence R. Eno
Lawrence R. Eno

Sworn to before me this

14th day of September, 1974.

Steven F. Miller
Notary Public

STEVEN F. MILLER
Notary Public, State of New York
No. 31-4501959
Qualified in New York County
Term Expires March 30, 1975

CABLE ADDRESS BADATENTS NEW YORK
TELEX ITT 422004

LAW OFFICES
BADER AND BADER
274 MADISON AVENUE
NEW YORK, N. Y. 10016

MILIAN BADER
ALTON BADER
BADER

WASHINGTON REPRESENTATIVE
ALBERT M. ZALKIND

September 11th, 1974

Re: Independent Investor Protective League
vs. Teleprompter et. al. Civil Action
73 Civil 4133 R.O.

Hon. Richard Owen
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, N.Y.

Dear Judge Owen,

I am replying to the letter of September 11th, 1974 of the attorneys for the defendant Touche Ross & Company with respect to the filing of answers to interrogatories with respect to Your Honor's Order. I am accused of attempting to mislead the attorneys for this defendant into believing that there had been full compliance with Your Honor's Order. This, of course, is not correct. If there has been any irregularity involved it has been inadvertent and, in any event, there has been no prejudice to the defendant involved.

There is pending, before Your Honor, returnable September 20th, 1974, a motion to extend time for compliance with Your Honor's order to permit me to receive signed copies of the interrogatories of Messrs. Michael and Fagan. The motion involved sets forth all of the relevant circumstances. I expect that, by the time this motion is heard, I shall have received the signed answers to interrogatories.

The facts involved are as follows:

On September 5th, 1974 I had Mr. Merrill Sands, the Secretary of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE sign the answers to interrogatories. I further instructed My

BEST COPY AVAILABLE

Secretary to send copies of the answers to interrogatories executed by the INDEPENDENT INVESTOR PROTECTIVE LEAGUE to all attorneys for the defendants. I inspected these before they went out, they were properly conformed and there is no question that they were served in time. There does not seem to be any complaint with respect to these answers.

In the afternoon of September 5th, 1974 I had to leave the office for St. Louis Missouri. I prepared, before I left, copies of the answers to interrogatories which I intended to mail and to conform as soon as I returned from St. Louis Missouri.

By inadvertence, on September 5th, 1974 apparently a set of the unconformed answers to interrogatories were sent to the attorneys for TOUCHE ROSS (but were not sent to the other attorneys). Meanwhile I was told on September 5th, 1974 during my absence from the office that the answers to the interrogatories by RANDOLPH had arrived.

On September 6th, 1974 a letter was sent to me by the attorneys for TOUCHE ROSS. I did not personally receive it since I was out of the office. I was told about the receipt of the letter on September 9th, 1974 (but not the contents) and believing that Mr. Eno was referring to the answers of RANDOLPH, FAGAN & MICHAEL I told his office that I hoped to receive the signed copies of those interrogatories and would be mailing them in a few days. I again told his office on September 10th, 1974 that I hoped to receive the signed copies of the original documents in a few days. I point out that I was out of the office in Washington DC on September 9th, St. Louis on September 6th and 7th, and on depositions on September 10th 1974.

I returned to the office on September 10th, 1974 at about 6PM. In the meantime I had told Mr. Eno personally that he could inspect the answers to interrogatories on September 11th, 1974 at 9 AM. As I looked at the file on September 10th, 1974 I saw the envelope to the ROSENMAN COLIN firm missing therefrom and also saw the letters to me of said firm. Now, for the first time, I realized what had happened.

Obviously it was futile to request time extensions in view of the conversation of September 10th with Mr. Eno. I therefore prepared a motion addressed to Your Honor. I also prepared discovery applications etc. This was done between 5AM and 9AM on September 11th

At 9AM I met with Mr. Nevling and showed him the original nswers of INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH. I lso gave him a photo-copy of the RANDOLPH answers and he admitted ervice on the original. I also gave him discovery papers and laintiff's motion for an extension of time.

At 10:45 I filed all of the papers involved in this Court.

The situation thus is as follows:

a- The answers to the interrogatories, as ordered by the Court, in the case of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH have been filed. There is a Rule 6(d) motion pending for a time extension with respect to MICHAEL and FAGAN.

b- There obviously was no attempt to mislead. The attorneys for the defendants are in communication with one another and, since only one attorney received the papers there obviously was an inadvertence in sending these.

c- There is a pending motion for extension of time for FAGAN and MICHAEL. The Court may either grant or deny it.

d- Even if FAGAN and MICHAEL were eliminated from this case it would make no difference since there are many other League members who can serve as Class Representatives.

The matter seems to be the conventional "tempest in a teapot" or conversely a "red herring". Mr. Eno does not tell the Court that I had offered to grant any extensions of time that he might require in this case until receipt of the answers of FAGAN and MICHAEL. Indeed I have been most generous in granting term extensions. I even have agreed to stay plaintiffs' discovery in this case until the defendants can make a motion directed to the sufficiency of the Complaint. I repeat my offer to grant any necessary term extensions to permit the defendants to study the interrogatory answers as received in order to permit the appropriate motions to be made.

I am prepared to meet with the Court at any convenient time if the Court feels that this is necessary.

IWB/cf
cc All Defendants Attorneys

Respectfully
I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al., Plaintiffs, - against - TELEPROMPTER CORP. et al., Defendants.	:	73 Civ. 4133 (RO) ANSWERING AFFIDAVIT ON PLAINTIFFS' MOTION FOR AN ORDER EXTENDING TIME TO ANSWER INTERROGATORIES

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co. ("Touche Ross"). I make this affidavit in opposition to plaintiffs' motion for an order extending the time of plaintiffs Michael Fagan ("Fagan") and Gary Michael ("Michael") to answer the Interrogatories propounded to them by Touche Ross on November 1, 1973.

2. The instant motion will be heard simultaneously with a motion by Touche Ross to dismiss the amended complaint as to all plaintiffs pursuant to Rules 37(b) and (d) of the Federal Rules of Civil Procedure ("FRCP") for their failure to answer the Interrogatories as required by this Court's order of August 16, 1974.

Since the two motions will be heard together, we will in this affidavit cross-reference to Touche Ross'

motion papers on its Rule 37 motion, and the references in this affidavit to Exhibits will (unless otherwise indicated) refer to the Exhibits annexed to the moving affidavits on the Rule 37 motion.

3. Even without reference to the unusual circumstances detailed below, the motion should be denied on the basis of the facts that cannot be disputed. The Interrogatories were served on November 1, 1973. On January 30, 1974, plaintiffs were directed by Judge Richard Owen to answer the Interrogatories, which were to be answered by February 5, 1974. No answers were at any time served by Fagan or Michael. On August 2, 1974, Touche Ross moved under Rule 37(a) FRCP to compel answers to the Interrogatories. On August 16, 1974, Judge Owen granted that motion in its entirety and directed that Fagan and Michael answer the Interrogatories within 20 days, i.e., by September 5, 1974 (Exhibits E and F). Neither of them did so.

Fagan and Michael have thus failed to answer the Interrogatories for the entire period of 10-1/2 months that the Interrogatories have been outstanding; they ignored the Court's direction to answer the Interrogatories by February 5, 1974, and have been in default thereunder for 7 months; and they finally failed to comply with the order of August 16, 1974 directing the service of answers by September 5, 1974.

No explanation or excuse for this neglect has been given. There are no supporting affidavits by Michael or Fagan. I. Walton Bader, Esq., one of plaintiffs' attorneys, in his moving affirmation states "I cannot tell the reason

for the delay." Finally, no attempt to secure an extension of time for response was made until after the time to comply with the Court's order had expired. As shown below, the reason for that failure was because an effort was made to deceive us into believing that timely responses had been received from plaintiffs, and the application was made only when the effort to deceive was exposed.

Rule 6(b) FRCP, so far as pertinent, provides:

> "When . . . by order of court an act is required . . . to be done at or within a specified time, the court for cause shown may at any time in its discretion . . . upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; . . ." (Emphasis added.)

In the instant case, no "cause" whatever has been shown and there has been no showing that the "neglect" is "excusable." The case is quite to the contrary, as shown below. The motion should thus be denied because of the complete failure to satisfy the requirements of Rule 6(b).

4. On September 6, 1974, we received in the mail, under postmark of September 5, 1974, what purported to be answers to the Interrogatories by all the plaintiffs, namely, Fagan, Michael, Martin F. Randolph, Jr. ("Randolph") and Independent Investor Protective League ("IIPL").

In the cases of the individual plaintiffs, there was no indication showing that the plaintiffs had signed or sworn to their respective answers (Exhibits H, I and J). On September 6 and 7, 1974, we wrote to plaintiffs' attorneys pointing this out, asking for the missing

information, and requesting that the originals of the answers be filed in Court as required by Rule 6(c) of the General Rules of this Court (which requires such filing within 2 days of service) (Exhibit K).

On September 9, 1974, my office received a telephone message from Mr. Bader that he would send us photocopies of the original answers "within the next few days." We immediately on September 9 sent him a letter by hand stating that this was unsatisfactory; that if the originals had not been filed we were prepared to examine them that very day; and that if such inspection were not allowed by the end of the day September 9, or the originals were not by then filed in Court, we would assume that plaintiffs' attorneys did not have the originals and did not have them on September 5, 1974, when they purported to serve the answers by sending us copies (Exhibit L).

The inspection of the originals was not permitted by the end of the day September 9, 1974 nor were the originals filed in Court by then.

On September 10, 1974, my office received another call from Mr. Bader stating that he would "be sending photocopies of the original answers." After receiving that message, I called Mr. Bader's office and spoke to a woman who stated that she was Mr. Bader's secretary. After being told that Mr. Bader was unavailable and could not be reached, and after telling Mr. Bader's secretary that unless he called me by 1:00 P.M. I would communicate with the Court, Mr. Bader called me shortly before 1:00 P.M. I told Mr. Bader that I wanted immediately to inspect all the original answers. He said that he had the originals and "you can take my word for it." I told him that that did not satisfy me and that I

wanted an immediate inspection. Mr. Bader said that he could not agree because he was involved in depositions. I told him that I would inspect them later that day in his office after his depositions were concluded. Mr. Bader then said that he did not know where the originals were in his office and that he might have left them at home. Mr. Bader said that I could see them sometime the following day. I told him that Mr. Nevling of our firm would be in his office at 9:00 A.M. the following day to inspect the originals, and Mr. Bader agreed. I sent a confirming letter by hand on September 10 to Mr. Bader (Exhibit M).

When Mr. Nevling appeared at Mr. Bader's office on the morning of September 11, he was shown original sworn answers of IIPL and Randolph, and Mr. Bader then told Mr. Nevling that he had not received signed or sworn answers from Fagan or Michael. As shown on Touche Ross' motion under Rule 37, there is no proof that Randolph's signed and sworn answers were in the possession of plaintiffs' attorneys on September 5, 1974 and it presently appears that they were not.

Thus in the cases of Michael and Fagan (and probably Randolph as well), what Mr. Bader sent to us on September 5, 1974 were drafts of proposed answers by those plaintiffs, and those drafts were sent to us in an effort to mislead us into believing that those plaintiffs had made timely responses to the Interrogatories as ordered by the Court on August 16,1974.

In response to a letter that we addressed to the Court on this subject on September 11, 1974, Mr. Bader sent a letter to the Court on that day. A copy of Mr. Bader's letter is attached hereto. That letter contains a number of misstatements. Analysis of those misstatements

simply confirms that there was in existence a deliberate effort to mislead counsel and the Court. Thus:

(a) In his letter of September 11, 1974, Mr. Bader suggests that the copies of the purported answers of the individual plaintiffs were "inadvertently" mailed to us on September 5 by some unnamed person in his office. The fact is that those purported answers arrived in the same envelope with the answers of IIPL. Appended to the answers of IIPL was a certification by Mr. Bader to the effect that on September 5, 1974 he mailed the copies of IIPL's answers to all attorneys (Exhibit G). The mailing was thus apparently by Mr. Bader and not by someone in his office. The excuse of "inadvertence" is thus without substance, as the following discussion also shows.

(b) Mr. Bader in his letter of September 11 says that on September 9 he told my office that he "hoped to receive the signed copies of those interrogatories [i.e., the answers of Fagan, Michael and Randolph] and would be mailing them in a few days." Mr. Bader left no such message in my office. Annexed hereto is an affidavit of Ms. Rosalyn Rosen, who received Mr. Bader's message, to which is attached a copy of her original message slip. The message slip shows that a telephone message was received from Mr. Bader at 9:15 A.M. on September 9 and the message to me was: "Rec'd your letter about Teleprompter case [i.e., my letter of September 6 requesting filing of the originals and information as to their execution -- Exhibit K]. Will send you photocopies of original Interrogatory

answers within next few days." As Ms. Rosen states, that was the entire message.

After receiving that message, I wrote, and had hand delivered to Mr. Bader, my letter of September 9 (Exhibit L) in which I stated that his proposal was unsatisfactory and demanded immediate filing or opportunity to inspect the originals.

(c) Mr. Bader in his letter of September 11 says that on September 10 he again told my office that he "hoped to receive the signed copies of the original documents in a few days." Mr. Bader left no such message in my office. Annexed hereto is an affidavit of Ms. Muriel Kresh, who received that message of Mr. Bader, to which is attached a copy of her original message slip. The message slip shows that a telephone call was receiv d from Mr. Bader at 9:25 A.M. on September 10 and the message to me was: "Mr. Bader called. Re Interrogatories. He will be sending photocopies of the original answers. He extends his apologies. He will extend your time answer for 2-1/2 or 3 weeks." As Ms. Kresh states, that was the entire message.

In neither case did Mr. Bader state, as he claims he did, that he was awaiting receipt of the originals from his clients. In both cases he said that he would be sending "photocopies of the original answers," thus reinforcing the impression that he sought to create that he had the originals and would forward the proof of that fact by sending photocopies.

(d) The character of Mr. Bader's misstatements can be judged from my conversation with Mr. Bader on September 10, after receiving the aforesaid message from Ms. Kresh. The substance of that call has already been set forth. At no time did Mr. Bader in that call say that he did not have all the originals of the answers or that he "hoped to receive the originals." Had he done so, obviously the inspection would have been unnecessary.

There are some other things that may be noted about Mr. Bader's letter of September 11, as follows:

(a) Mr. Bader says that he was in Washington, D. C. on Monday, September 9. He does not say when he left for Washington, D. C. However, he called my office at 9:15 A.M. that day. The call was in response to my letter of Friday, September 6. That letter was most explicit in its references to the original answers (Exhibit K). Mr. Bader's response to that letter in his telephone call on September 9 was knowledgeable even though deceptive. Yet Mr. Bader says that, when he made the call, all he knew was that we had sent a letter and that he did not know what the letter said.

(b) My hand-delivered letter of September 9 (Exhibit L) was also most explicit in demanding immediate inspection or filing of the original answers. Mr. Bader does not say when or how this letter came to his attention. Yet at 9:25 A.M. on September 10 he made another knowledgeable, even though deceptive, call to my office. And when

he spoke to me before 1:00 P.M. on September 10, Mr. Bader exhibited complete knowledge of what I was talking about.

The claim in Mr. Bader's letter of September 11 that it was not until sometime after 6:00 P.M. on September 10 that he realized what had happened, is obviously untenable.

5. In addition to the foregoing, it should be noted that Mr. Bader admittedly at all times knew that he did not have the original answers of Fagan and Michael. Yet he made no attempt to secure any extension of time for the filing of their answers until the pressures we exerted compelled him to admit to us that he did not have the originals of their answers. Obviously, what Mr. Bader was hoping was that if he delayed the inspection long enough the originals would come in in the interval, as was apparently the case with Randolph. Finally, knowing that he would have to admit that he did not have the originals at 9:00 A.M. on September 11, when Mr. Nevling would be in his office, Mr. Bader earlier that morning (as he admits in his letter of September 11) prepared the instant motion papers for an extension of time.

6. It is clear for all the foregoing reasons that plaintiffs' motion should be denied.

Lawrence R. Eno

Lawrence R. Eno

Sworn to before me this
16th day of September, 1974

Evelyn Messinger

Notary Public

EVELYN MESSINGER
NOTARY PUBLIC, State of New York
No. 31-7012345
Qualified in New York County
Commission Expires March 30, 1976

* * * *

[A letter from I. Walton Bader to Judge Owen dated September 11, 1974, one of the attachments to the preceding affidavit, is not reproduced here. Another copy of this letter appears at pp.297-299 above].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al., Plaintiffs,	73 Civ. 4133 (RO)
-against-	AFFIDAVIT
TELEPROMPTER CORP. et al., Defendants.	

- -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROSALIND ROSEN, being duly sworn, deposes and says:

I am employed by the firm of Rosenman Colin Kaye Petschek Freund & Emil. At 9:15 A.M. on September 9, 1974, I received a telephone message for Mr. Eno from a man who identified himself as Mr. Bader. Attached hereto is a copy of my contemporaneous notes of that message. Those notes contain the complete message given to me by Mr. Bader, and he told me nothing else.

Sworn to before me this
16th day of September, 1974.

Rosalind Rosen
ROSALIND ROSEN

Evelyn Messinger
Notary Public

EVELYN MESSINGER
NOTARY PUBLIC, State of New York
No. 31-7[illegible]12345
Qualified in New York County
Commission Expires March 30, 1976

To L. Eno

Date 9/9 Time 9:15 A.M. P.M.

WHILE YOU WERE OUT

M. Mr. Baker

of

Phone
Area Code Number Extension

TELEPHONED	✓	PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
	RETURNED YOUR CALL		

Message Rec'd. your letter about Fletcher case. Will send Synd. photo copies of original

AD 5 Operator

(over)

Interrogatory ans within next few days.

RR.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al., Plaintiffs,	73 Civ. 4133 (RO)
-against-	
TELEPROMPTER CORP. et al., Defendants.	AFFIDAVIT

- -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MURIEL KRESH, being duly sworn, deposes and says:

I am employed by the firm of Rosenman Colin Kaye Petschek Freund & Emil as secretary to Lawrence R. Eno, Esq. At 9:25 A.M. on September 10, 1974, I received a call for Mr. Eno from a man who identified himself as Mr. Bader. When I told him that Mr. Eno was not in, he left a message with me for Mr. Eno. Attached hereto is a copy of my contemporaneous notes of that message. Those notes contain the complete message given to me by Mr. Bader and he told me nothing else.

Sworn to before me this
16th day of September, 1974.

Muriel Kresh
MURIEL KRESH

Evelyn Messinger
Notary Public

EVELYN MESSINGER
NOTARY PUBLIC, State of New York
No. 31-7912345
Qualified in New York County
Commission Expires March 30, 1976

From XXXWRENCEXROXENXX

9/10
9:25 A.M

To LRE

Mr. Bader called. Re Interrogatories. He will be sending photo copies of the original answers. He extends his apologies. He will extend your time to answer for 2 1/2 or three weeks.

MK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs

Civil Action
73 Civil 4133 RO

against

TELEPROMPTER CORPORATION et. al.

Defendants

AFFIDAVIT OF I.WALTON BADER

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document constitutes an affidavit under the Laws of the State of New York.

I am one of the attorneys for the plaintiffs herein and as General Counsel of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE, I am fully familiar with the facts and circumstances of this action having been in charge thereof since its inception.

I submit that the motion to strike the Complaint (apparently made only by the defendant TOUCHE ROSS & COMPANY) is not proper and should be denied. There has been no default in compliance with orders of this Court.

At the outset, however, I wish to point out that it is clear that great difficulties are going to be involved in this important and complicated case, with respect to discovery matters. I would expect, in view of the present position of the defendant TOUCHE ROSS & COMPANY, that there will be repeated discovery motions, document production requests, motions to vacate requests, deposition rulings, etc. The present set of motions, which, in my opinion, are completely unnecessary when experienced counsel are involved on both sides and which should have been disposed of by stipulation, indicate the large volume of paperwork on discovery matters that will be involved. Accordingly the undersigned suggests that this case be assigned permanently to a United States Magistrate to superintend all discovery matters. This is generally the practice of this Court in similar cases. For example, Judge Frankel assigned two actions pending in this Court, INDEPENDENT INVESTOR PROTECTIVE LEAGUE vs. AVCO CORPORATION et. al. Civil Action 74 Civil 731 and INDEPENDENT INVESTOR PROTECTIVE LEAGUE vs. HORNBLOWER & WEEKS, HEMPHILL NOYES et. al. , Civil Action 74 Civil 1802 to Magistrate Goettel for all pre-trial discovery purposes. The undersigned believes that both sides in these complicated and substantial actions are pleased with this proceedure.

The Court is also advised that the answers to interrogatories of the plaintiff MICHAEL have been now received, served, and filed. This only leaves outstanding the answers of the plaintiff FAGAN. FAGAN, of course, is not necessary to the prosecution of this case but, understandably, the undersigned does not wish to be accused of failing to protect FAGAN's rights.

The undersigned will not, at this time, go into the reasons for the service of unverified interrogatory answers upon the attorneys for the defendant TOUCHE ROSS & COMPANY (although such answers were not served upon the attorneys for the other defendants until answers of the plaintiff RANDOLPH were served on September 10th, 1974. Since the attorneys for the other defendants make no objection to the service we need only consider the facts with respect to the defendant TOUCHE ROSS & COMPANY.

The said defendant admits to (1) service of answers to interrogatories by the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE and plaintiff RANDOLPH on September 6th, 1974. (Since the Court's order was entered on August 16th, 1974 but notice thereof was given by mail on that date three additional days are granted for compliance (Rule 6(e) FRCP). Thus the time for compliance with the order of this Court would expire on September 6th, 1974 and at that time service of the answers of the plaintiffs INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH had already been made. In addition, of course, the demand made by the defendant TOUCHE ROSS & COMPANY to see the original documents excused the failure to file the original documents before September 11th, 1974 and further constituted, in effect, a stipulation for extension until September 11th, 1974.

Thus the failure to submit answers of the plaintiffs MICHAEL and FAGAN are subject to the motion made on September 11th, 1974 for extension of time and the Court has power to grant such relief under Rule 6(b) FRCP.

We now come to the claim by the defendant TOUCHE ROSS & COMPANY that the answers supplied are "insufficient" because the answers do not state that these are "all sales" or "all purchases" and that there seems to be some error in the RANDOLPH answers. If answers to interrogatories are incorrect, of course, a party can make the appropriate capital of this fact at the trial of the action. However the error is understandable since RANDOLPH did not have his order confirmations. This he now has and this problem is cleared up.

The answers by the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE are correct as stated and further answers are not required. Sales information, other than with respect to the plaintiff RANDOLPH was not given because, insofar as the League is concerned, there were no other sales with respect to his stock. Sales information was given with respect to the member MAHON was, of course, given. As to the names in which the stock was held this, of course, is obvious from the record. Also, if the stock involved is held in "street names" and the members are merely the beneficial owners this would be immaterial to the issues of this suit.

WHEREFORE the undersigned prays that the plaintiffs' motion be granted and the defendant TOUCHE ROSS & COMPANY's motion be denied.

Dated : September 18th, 1974

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, ET AL.,

Plaintiffs,

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

CIVIL ACTION
73 CIVIL 4133
(RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, GARY MICHAEL

The Plaintiff GARY MICHAEL submits the following Supplemental Answers to the First Interrogatories of the Defendant TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My address is ~~100 Chalet Village, Stockbridge,~~ LOWER CHRISTIAN HILL RD RFD #1 BETHEL VT. 05032. Vermont. I am a law student.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those

set forth in response to Interrogatory 6, and if so (b) state such other addresses and occupations.

Answer: I have no other address or occupation other than that set forth hereinabove.

9. With respect to Michael, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth purchase information with respect to my holdings of stock of Teleprompter Corp. I have never sold any of such stock:

Date of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972 ~~April 1, 1972~~	100	30

Dated: August 29, 1974

Yours, etc.
BADER and BADER
Attorneys for the Plaintiff

By: I. Walton Bader

I. Walton Bader
274 Madison Avenue
New York, N.Y. 10016
Telephone: (212) LE 2-6860

TO: ALL THE ATTORNEYS FOR
THE DEFENDANTS

VERIFICATION

STATE OF: ~~VERMONT~~ Connecticut)
) ss.:
COUNTY OF: Fairfield)

GARY MICHAEL, being duly sworn, deposes and says that he has read the Answers to the foregoing Interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

Gary Michael
Gary Michael

SWORN TO BEFORE ME
THIS 16th DAY OF
September, 1974.

Donna M. Morgan
NOTARY PUBLIC.

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify under penalties of perjury, that on September 18th, 1974, I mailed a copy of the within document to all of the attorneys affected by same.

I. Walton Bader
I. Walton Bader.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
etc.

Plaintiffs

against

Civil Action
73 Civil 4133 RO

TELEPROMPTER CORP. et. al.

Defendants

SUPPLEMENTAL AFFIDAVIT BY
PLAINTIFF INDEPENDENT
INVESTOR PROTECTIVE LEAGUE

STATE OF NEW YORK
COUNTY OF PUTNAM ss:

MERRILL R. SANDS, being duly sworn, deposes and says:

I am the Secretary and a Director of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE and am the management representative of the League in charge of this litigation. I am controlling the strategy of this litigation and my attorneys are carrying out my instructions. Indeed the attorney in charge of this case for the plaintiffs is General Counsel of the said INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

At the outset I wish to inform the Court that Mr. Randolph, one of the plaintiffs in this action, first approached me in connection with the issues in this case and it was I who made Mr. Randolph a member of the League.

I further state that the inadvertent mailing of a set of unsigned answers to interrogatories was done by me by inadvertence upon my visit to Mr. Bader's office late in the day of

September 5th,1974. I had, prior to the said mailing, seen the executed answers of Mr. Randolph which had arrived late in the day at Mr. Bader's office and I then assumed that I could send out the copies thereof.

I therefore wish to inform the Court that while the mailing of these copies to the attorneys for Touche Ross & Company was an inadvertence it was my inadvertence and was not due to any fault of Mr. Bader.

I also wish to inform the Court as to the reason for the delay in answering the interrogatories in the first instance.

My investigation of the SEC files indicated that Touche Ross & Company, the defendant herein, had been severely dealt with by the SEC in connection with audits performed for U.S. Financial. I also determined that the SEC had a preliminary investigation in progress with respect to TELEPROMPTER CORPORATION.I was informed by the SEC that, under no circumstances, will investigational files be made available with regard to an investigation in progress by the SEC but, after the conclusion of an investigation, if it results in administrative sanctions or court action, the processes and pleadings involved will become available to the public. Also, if the investigation concludes with some type of voluntary sanctions, it is sometimes possible to obtain the SEC investigational files.

Therefore, in this case, I determined that the League should not go ahead with an active role in this action until the SEC investigation was concluded. The SEC investigation has, in fact, now been concluded and resulted in a consent order against TELEPROMPTER CORPORATION. Discovery can now be had with respect to the manner in which the investigation was conducted and possibly obtain access to the SEC investigative file.

I was subsequently informed by Mr. Bader that he had arranged an "open ended" stipulation with the defendants wherein, so long as the interrogatories were not answered, the defendants would not have to answer or otherwise move with respect to the Complaint.

I now go to the claim, made by the defendant TOUCHE ROSS & COMPANY that the interrogatories, as required to be answered by Court Order, were not properly answered within the time allowed. This is, I submit, utter nonsense.

The records of purchases and sales of TELEPROMPTER stock, as set forth in the records of the League, were fully set forth in the Answers to Interrogatories. The reason why sales were not mentioned with respect to all members other than Randolph is that, insofar as the League is aware, there were no such sales. With respect to the claim that there was not full disclosure of all purchases the records of the League set forth only those purchases given by its members to the League. Thus the answers to interrogatories supplied heretofore represent the total knowledge known to the League and the claim that these answers are inadequate is total nonsense.

The League has also obtained, from the plaintiff RANDOLPH, all of the confirmations of his stock purchases. These are annexed to this affidavit. There is some variance between these confirmations and the information supplied in the answers to interrogatories of RANDOLPH. However the RANDOLPH answers were qualified as constituting his best knowledge at the time these answers were given. If they are inaccurate the defendants are at liberty to make any application to the Court that they so desire.

The League has also received the answers of the plaintiff MICHAEL and these answers have been now filed with the Court and duly served upon the attorneys for all defendants.

WHEREFORE the undersigned prays that the motions made by the defendant TOUCHE ROSS & COMPANY be in all respects denied and the motion for extension of time by the plaintiffs be in all respects granted.

Merrill R. Sands

Merrill R. Sands

Sworn to before me
this 17th day of September 1974.

I. WALTON BADER
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-5140850
Qualified in New York County
Commission Expires March 30, 1976

212 WHITEHALL 3-0900

Fahnestock & Co.
(Established 1881)

110 WALL ST., NEW YORK, N. Y. 10005

OFFICE COPY

CUSIP-NO 079408104

AS BROKERS FOR YOU, OR AS PRINCIPALS WHEN INDICATED BY NUMBER 1 UNDER ◊, WE HAVE MADE THE FOLLOWING TRANSACTION

YOU BOUGHT *	YOU SOLD		PRICE						
200		TELEPHONE TEL CORP	20	3/8	0115	012273	12 7994	1	50
					TRADE DATE	SETTLEMENT DATE			

TYPE CM

SEE REVERSE

On other than round lots (odd lots) [illegible] has been added to the price on purchases [illegible] Exchange this amount is 12 [illegible] provided on request.

AMOUNT	INTEREST	STATE TAX		REG. FEE	COMMISSION
5,075.00					69.00

5,760.04

NET AMOUNT *

DR MARTIN P RANDOLPH JR
70 DEER HILL AVE
DANBURY CT 06810

552

Qty	Trade	Date		Settlement Date
(100)	14 ¾	2/9/72	Bought	2/16/72
	29 ¾	1/8/73	Bought	1/15/73
	25 ½	2/1/73	Bought	2/8/73
	24 ½	2/15/73	Bought	2/22/73
	27 ¼	3/08/73	Sold	3/08/73

I made $400 profit on selling the 200 shares I bought at 24½ + 25½ respectively.

100	28 ¾	1/15/73	Bought	1/22/73
100	27 ¾	3/15/73	Bought	3/28/73
100	24 ¼	3/22/73	Bought	3/30/73
100	26 ¼	3/29/73	Sold	4/05/73

I made $400 profit on the 200 shares I bought at 24¼ + 26¼ for a profit of 100. This was the last successful trade I made in Illegitimate Beer in mind that it was psychologically impossible for me to make a successful trade in IB in view of the deteriorating situation with the stock at the time. I refused to take an actual loss on the stock because I felt it would come back.

100	24 ¼	4/04/73	Bought	4/11/73
100	20 ¼	4/24/73	Bought	5/01/73
100	13 ½	7/03/73	Sold	7/11/73
100	9 ¼	8/05/73	Sold	8/12/73
200	4 ½	11/12/73	Sold	11/19/73

If you have any questions, please call me at 1-714-552-1131 or write me. I will be pleased to discuss a possible change of estate.

Yours truly,

[illegible] Fredrick, Ca.

TRANSFERED AS OF

FEB.29,1972

MR MARTIN F RANDOLPH JR
70 DEER HILL AVE
DANBURY CT 06810

IN ACCOUNT WITH

Fahnestock & Co.
(Established 1881)

110 WALL STREET

NEW YORK, N. Y. 10005

TEL. 212 WHITEHALL 3-8900

OFF ACCOUNT NUMBER
12 7554 1

TYPE OF ACCOUNT
1. CASH
2. MARGIN
3. SHORT
4. NON-PURPOSE
5. SPECIAL SUBSCRIPTION
6. INCOME
7. SPECIAL BOOK
8. SPECIAL COST

DATE	QUANTITY BOUGHT OR RECEIVED	QUANTITY SOLD OR DELIVERED	DESCRIPTION	PRICE	AMOUNT DEBIT	AMOUNT CREDIT	BALANCE DEBIT UNLESS MARKED
02-14			CHECK	DAN		3,568.34	
02-16	25		TELEPROMPTER CORP	140 3/4	3,568.34		
							.00
			SECURITY POSITIONS				
	25		TELEPROMPTER CORP				

554

NOTICE — THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES

MONTH ENDING	ACCOUNT	R.R.	PAGE
1-31-73 03	44-00137	039	1

LAST STMT.	S.S./I.D. NO.
- -	6711 049-33-7894

MARTIN F RANDOLPH JR
70 DEER HILL AVE
D. BURY CONN 06810

IN ACCOUNT WITH

F. S. MOSELEY & CO.
ESTABLISHED 1879
50 CONGRESS STREET
BOSTON, MASS. 02109

20 EXCHANGE PLACE
NEW YORK, N. Y. 10005

209 CHURCH STREET
NEW HAVEN, CONN. 06507

SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND. 46204

Y HAVE RECEIVED CONFIRMATION FOR TRADES
O NOT APPEAR ON YOUR STATEMENT. HOW-
THE SETTLEMENT DATE OF TRADE AS SHOWN
CONFIRMATION WAS LATER THAN THE DATE
APPEARS AT THE TOP OF YOUR STATEMENT THE
WILL APPEAR ON YOUR NEXT REGULAR MONTH-
ATEMENT.

E THIS STATEMENT SHOULD BE RETAINED AS IT
AINS INFORMATION THAT MAY BE NEEDED TO
E YOU TO VERIFY INTEREST CHARGES APPEAR-
N SUBSEQUENT STATEMENTS, AND FOR INCOME
URPOSES.

CHECKS AND COMMUNICATIONS SHOULD BE SENT
HE OFFICE SERVICING YOUR ACCOUNT. PLEASE
N ACCOUNT NUMBER SHOWN ABOVE.

EXAMINE AND RETURN IMMEDIATELY IF NOT
CT.

ERRORS AND OMISSIONS EXCEPTED.

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AM
			OPENING BALANCE CASH ACCOUNT			
01 12			CK RECD	CHK		
01 15	100		TELEPROMPTER CORP	29 7/8	3,036.33	
01 31			CLOSING BALANCE CASH ACCOUNT			
	100		TELEPROMPTER CORP	POS		
			END OF STATEMENT		**********	

DIV 0.00 INT 0.00 MUN 0.00 YTD DV 0.00 YTD INT 0.00 YTD

LAST STMT.		S.S./I.D. NO.
01-31-73	5451	043-33-7394

MARTIN F RANDOLPH JR
70 DEER HILL AVE
DANBURY CONN 06810

IN ACCOUNT WITH

F. S. MOSELEY & CO.
ESTABLISHED 1879
50 CONGRESS STREET
BOSTON, MASS. 02109

20 EXCHANGE PLACE
NEW YORK, N. Y. 10005

209 CHURCH STREET
NEW HAVEN, CONN. 06507

135 SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND. 46204

					OPENING BALANCE CASH ACCOUNT		
					CK RECD	CHK	
02/08		100			TELEPROMPTER CORP	25 1/2	2,594.[illegible]
02/21					CK RECD	CHK	
02/22		100			TELEPROMPTER CORP	24 1/2	2,493.[illegible]
02/23					CK PAID	CHK	1.[illegible]
02/23					CLOSING BALANCE CASH ACCOUNT		
		300			TELEPROMPTER CORP	POS	
					END OF STATEMENT		**********

YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

NOTICE: THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND FOR INCOME TAX PURPOSES.

ALL CHECKS AND COMMUNICATIONS SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT. PLEASE MENTION ACCOUNT NUMBER SHOWN ABOVE.

PLEASE EXAMINE AND RETURN IMMEDIATELY IF NOT CORRECT.

E & OE—ERRORS AND OMISSIONS EXCEPTED.

DIV 0.00 INT 0.00 MUN 0.00 YTD DV 0.00 YTD INT 0.00

557

F. S. MOSELEY & CO.

ESTABLISHED 1879

50 CONGRESS STREET
BOSTON, MASS. 02109

-HANGE PLACE
Y. 10005

209 CHURCH STREET
NEW HAVEN, CONN 06507

135 SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND 46204

BOUGHT	YOU SOLD	
	200	TELEPROMPTER CORP

PRICE	M	C
27 7/8	2	1

CU. 87942510430C

PRINCIPAL	INTEREST	COMMISSION	STATE TAX		SEC. FEE	POSTAGE OR MISC.	[illegible]	TRADE DATE		TRADE NO.
5 7 00		4 15	4 00		12		5 26	3 13	3 13	23

-1 MARTIN F A MIDDLPH JR
70 DEER HILL AVE
DANBURY CONN 06810

S-08

ACCOUNT NUMBER	A.A.	SECURITY	
[illegible]013.-1-2	03	[illegible]	231
045-38-7[illegible]			

IDENTIFICATION NO.

PAYMENT OF PURCHASE OR SECURITIES SOLD MUST BE RECEIVED BY

ALL CHECKS AND COMMUNICATIONS SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT. PLEASE MENTION ACCOUNT NUMBER SHOWN ABOVE.

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) ON ALL EXCHANGES AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES, ON THE NEW YORK STOCK EXCHANGE INC. THIS AMOUNT IS 12½¢ PER SHARE. IN ALL CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

ORDANCE WITH YOUR INSTRUCTIONS WE HAVE THIS DAY MADE THE ABOVE TRANSACTION
R ACCOUNT SUBJECT TO THE AGREEMENT ON THE REVERSE THEREOF.

ACCOUNTING	ACCOUNT	A.N.	PAGE
-30-73 03	44-00137	039	1

PREV. STMT.	S.S. I.D. NO.
2-23-73 5909	049-33-7894

RTIN F RANDOLPH JR
0 DEER HILL AVE
ANBURY CONN 06810

IN ACCOUNT WITH

F. S. MOSELEY & CO.
ESTABLISHED 1879
50 CONGRESS STREET
BOSTON MASS. 02109

20 EXCHANGE PLACE
NEW YORK, N. Y. 10005

209 CHURCH STREET
NEW HAVEN, CONN. 06507

SOUTH LA SALLE STREET
CHICAGO, ILL. 60603

1 INDIANA SQUARE
INDIANAPOLIS, IND. 46204

MAY HAVE RECEIVED CONFIRMATION FOR TRADES DO NOT APPEAR ON YOUR STATEMENT. HOW- IF THE SETTLEMENT DATE OF TRADE AS SHOWN CONFIRMATION WAS LATER THAN THE DATE PPEARS AT THE TOP OF YOUR STATEMENT THE E WILL APPEAR ON YOUR NEXT REGULAR MONTH- TATEMENT.

E THIS STATEMENT SHOULD BE RETAINED AS IT NS INFORMATION THAT MAY BE NEEDED TO LE YOU TO VERIFY INTEREST CHARGES APPEAR- SUBSEQUENT STATEMENTS, AND FOR INCOME ERPOSES.

CHECKS AND COMMUNICATIONS SHOULD BE SENT E OFFICE SERVICING YOUR ACCOUNT. PLEASE TION ACCOUNT NUMBER SHOWN ABOVE.

EXAMINE AND RETURN IMMEDIATELY IF NOT T.

ERRORS AND OMISSIONS EXCEPTED.

DATE	DUE FROM RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	REF. OR ENTRY	AMOUNT CHARGED	AI
0223			OPENING BALANCE CASH ACCOUNT			
0226		100	TELEPROMPTER CORP	TFR		
0303		200	TELEPROMPTER CORP	27 7/8		
0309			CK PAID	CHK	5,404.20	
0328	100		TELEPROMPTER CORP	27 3/8	2,784.14	
0329			CK RECD AS OF 3/28/73	CHK		
0329			CK RECD AS OF 3/28/73	CHK		
0329			CK RECD AS OF 3/28/73	CHK		
0329			CK RECD AS OF 3/28/73	CHK		
0330			CLOSING BALANCE CASH ACCOUNT			
	100		TELEPROMPTER CORP	POS		
			END OF STATEMENT		**********	

DIV 0.00 INT 0.00 MUN 0.00 YTD DV 0.00 YTD INT 0.00 YTD

533

MR LESTER F RANDOLPH JR
7 DEER HILL AVE
DANBURY CT 06810

Schwabacher & Co.
(Established 1857)
110 WALL STREET
NEW YORK, N. Y. 10005
TEL. 212 WHITEHALL 3-0900

DATE	QUANTITY: BOUGHT OR RECEIVED	QUANTITY: SOLD OR DELIVERED	DESCRIPTION	PRICE	AMOUNT: DEBIT	AMOUNT: CREDIT	BALANCE: DEBIT UNLESS MARKED
03-26			CHECK	DAN		2,150.00	
03-30	100		TELEPROMPTER CORP	024 7/8	2,531.84		
							381.84
			SECURITY POSITIONS				
	100		TELEPROMPTER CORP				

NOTICE: THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND ALSO FOR INCOME TAX PURPOSES (SEE REVERSE SIDE FOR AGREEMENT, ETC.)

553

7? DE? FILE ??
BAILEY ST 681

[illegible]
110 WALL STREET
NEW YORK, N. Y. 10005
TEL. 212 WHITEHALL 3-8900

9 SHORTVS

DATE	QUANTITY BOUGHT OR RECEIVED	QUANTITY SOLD OR DELIVERED	DESCRIPTION	PRICE	AMOUNT DEBIT	AMOUNT CREDIT	BALANCE DEBIT UNLESS MARKED
			BALANCE FWD MAY.30,1973				381
03-31			CHECK	DAN		151.42	
04-05		10	TELEPROMPTER CORP	026 7/8		2,638.00	
04-10			CHECK	DAN		63.00	
04-11	100		TELEPROMPTER CORP	024 1/4	2,468.53		
04-16			MCH2.TC APR16 5%	INT	.51		
			AVG DR BAL 16 DAYS 331.36				
			CLOSING INT BAL 82.05CR				
			SECURITY POSITIONS				
	100		TELEPROMPTER CORP				

NOTICE. THIS STATEMENT SHOULD BE RETAINED AS IT CONTAINS INFORMATION THAT MAY BE NEEDED TO ENABLE YOU TO VERIFY INTEREST CHARGES APPEARING ON SUBSEQUENT STATEMENTS, AND ALSO FOR INCOME TAX PURPOSES (SEE REVERSE SIDE FOR AGREEMENT, ETC.)

530

WHITEHALL 3-8900

CUSIP-NO 879483104

Fahnestock & Co.

(Established 1881)

110 WALL ST., NEW YORK, N. Y. 10005

BROKERS FOR YOU, OR AS PRINCIPALS WHEN INDICATED BY NUMBER 1 UNDER ◊, WE HAVE MADE THE FOLLOWING TRANSACTION:

BOUGHT #	YOU SOLD		PRICE	TRADE DATE (MO DAY)	SETTLEMENT DATE (MO DAY YR)	ACCOUNT NO.	TYPE	CM	↑ ◊
		TELEPROMPTER CORP	20 1/4	0501	1508	12 7554	2	50	2

SEE REVERSE SIDE.

On orders than round lots (ordinarily 100 shares), on all exchanges an amount has been added to the price on purchases or deducted on sales. On the New York Stock Exchange this amount is 12½¢ per share. In all other cases an explanation will be provided on request.

AMOUNT	INTEREST	STATE TAX		REG. FEE	COMMISSION
8,[illegible]					118.9[illegible]

8,212.9[illegible]

NET AMOUNT *

MR MARTIN F RANDOLPH JR
7[illegible] DEER HILL AVE
DANBURY CT 06810

551

PLEASE RETURN ATTACHED COPY 2 WITH YOUR REMITTANCE AND/OR SECURITIES SOLD (IF NOT IN YOUR ACCOUNT) ON OR BEFORE DUE DATE.

2 WHITEHALL 3-8700

CUSIP-NO 879483104

Fahnestock & Co.
(Established 1881)

110 WALL ST., NEW YORK, N. Y. 10005

ROKERS FOR YOU, OR AS PRINCIPALS WHEN INDICATED BY NUMBER 1 UNDER ♦, WE HAVE MADE THE FOLLOWING TRANSACTION:

LGHT ●	YOU SOLD		PRICE	TRADE DATE (MO DAY)	SETTLEMENT DATE (MO DAY YR)	ACCOUNT NO	TYPE	CV	! ●
100		TELEPROMPTER CORP	24 1/4	0404	041173	12 7554	2	50	2

SEE REVERSE SIDE.

On other than round lots (normally 100 shares) on all exchanges an amount has been added to the price on purchases or deducted on sales. On the New York Stock Exchange this amount is 12½ cents per share. In all other cases an explanation will be provided on request.

AMOUNT	INTEREST	STATE TAX		REG. FEE	COMMISSION
2,425.00					43.53

2,468.53
NET AMOUNT *

MR MARTIN F RANDOLPH JR
[illegible] DEER HILL AVE
DANBURY CT 06810

5532

...Y RETURN ATTACHED COPY 2 WITH YOUR REMITTANCE AND/OR SECURITIES SOLD (IF NOT IN YOUR ACCOUNT) ON OR BEFORE DUE DATE.

WE CONFIRM THE FOLLOWING TRANSACTION SUBJECT TO THE AGREEMENT ON THE REVERSE SIDE HEREOF.

[illegible]

MEMBER NEW YORK STOCK EXCHANGE INC.

[illegible]

YOU BOUGHT	YOU SOLD
	400
SECURITY NO.	REFERENCE NO.
879488104	25036810
YOUR ACCOUNT NUMBER	A E
76 11733	1 58
CODE A B	TRADE DATE 081073
11	DATE DUE 081773

ALL INSTRUCTIONS, INQUIRIES, ETC. SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT.

DESCRIPTION

TELEPROMPTER CORP
DUPLICATE

MR MARTIN F RANDOLPH
70 DEER HILL AVE
DANBURY CONN 06810

PRICE	AMOUNT
13 1/2	540000
INTEREST	
COMM./CHG.	9360
STATE TAX	1500
REG. FEE	11
MISCELL.	
I.&P.	
CON TAX	
DUE YOU	529029

AMOUNT ▷

WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS.

563

WE CONFIRM THE FOLLOWING TRANSACTION SUBJECT TO THE AGREEMENT ON THE REVERSE SIDE HEREOF.

[illegible]

MEMBER NEW YORK STOCK EXCHANGE INC.

I BOUGHT	YOU SOLD
	200

SECURITY NO.	REFERENCE NO
7[illegible]492104	21705878

YOUR ACCOUNT NUMBER		AE	
76 11733	1	58	M

TRADE DATE		111273
DATE DUE		111973

ALL INSTRUCTIONS, INQUIRIES, ETC. SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT.

DESCRIPTION

TELEPROMPTER CORP

MR MARTIN F RANDOLPH
70 DEER HILL AVE
DANBURY CONN 06810

PRICE	AMOUNT
4 3/4	95000
INTEREST	
COMM./CHG.	3453
STATE TAX	250
REG. FEE	02
MISCELL.	
I & P.	
CDN TAX	
AMOUNT ▷ DUE YOU	91250

WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS.

563

WE CONFIRM THE FOLLOWING TRANSACTION SUBJECT TO THE AGREEMENT ON THE REVERSE SIDE HEREOF.

YOU BOUGHT	YOU SOLD
	400
SECURITY NO	REFERENCE NO
879433104	24802389
YOUR ACCOUNT NUMBER	A E
76 11733 1	58 M
CODE	TRADE DATE 090573
1	DATE DUE 091273

ALL INSTRUCTIONS, INQUIRIES, ETC. SHOULD BE SENT TO THE OFFICE SERVICING YOUR ACCOUNT.

DREXEL BURNHAM & CO

DESCRIPTION

TELEPROMPTER CORP

MR MARTIN F RANDOLPH
70 DEER HILL AVE
DANBURY CONN 06810

MEMBER NEW YORK STOCK EXCHANGE

PRICE	AMOUNT
9 1/4	370000
INTEREST	
COMM. CHG.	7500
STATE TAX	1000
FED. FEE	08
MISCELL.	
I. & P.	
CDN TAX	
AMOUNT ▷ DUE YOU	361062

WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS

565

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,	: 73 Civ. 4133 (RO)
Plaintiffs,	: REPLY AFFIDAVIT ON MOTION OF TOUCHE ROSS & CO. TO DISMISS THE COMPLAINT
-against-	:
TELEPROMPTER CORP. et al.,	: SUR-REPLY AFFIDAVIT ON PLAINTIFFS' MOTION FOR EXTENSION OF TIME
Defendants.	:

- -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

This affidavit is submitted in answer to the affirmation of I. Walton Bader, Esq. dated September 18, 1974 and the affidavit of Merrill R. Sands dated September 17, 1974, both of which were received by us on September 19, 1974. The affirmation and the affidavit are apparently submitted both on plaintiffs' motion for an extension of time with respect to plaintiffs Fagan and Michael and on Touche Ross' motion under Rule 37 to dismiss the complaint.

FACTS COMMON TO BOTH MOTIONS

In our moving affidavits on Touche Ross' Rule 37 motion, and in our answering affidavit on plaintiffs' motion for an extension of time, we demonstrated that plaintiffs' attorneys had resorted to a deceitful device to lead us to believe that the individual plaintiffs had answered the Interrogatories by September 5, 1974, the time provided by the Court's order

of August 16, 1974; that thereafter they failed to file the originals in Court although such filing was demanded, and frustrated our attempts at inspection of the originals (evidently hoping that in the interval the answers would be received); that finally on September 11, 1974 they were compelled to permit the inspection by our statement that otherwise we would bring the matter to the immediate attention of the Court; that they then were forced to admit that they had never received signed and sworn answers from Fagan and Michael; and that in a letter to the Court on September 11, 1974 plaintiffs' attorneys made deliberate misstatements to the Court.

Mr. Bader, the attorney involved, has submitted no affidavit or affirmation with respect to these various matters. In his September 18 affirmation, he expressly says (p.3), "The undersigned will not, at this time, go into the reasons for the service of unverified interrogatory answers upon the attorneys for the defendant Touche Ross & Co...." Instead, Mr. Bader submits the affidavit of Mr. Sands, allegedly the Secretary and a Director of IIPL. Mr. Sands says that late in the day of September 5, 1974 he visited Mr. Bader's office; saw there the executed answers of Randolph which had arrived there late that day; "assumed" that he could send out "copies thereof"; and then through "inadvertence" mailed "a set of unsigned answers to interrogatories."

If Mr. Sands was the one who mailed the purported copies

of the answers of the individual plaintiffs, the claim of "inadvertence" cannot be sustained. Thus:

(a) On Friday, September 6, 1974 we wrote to Mr. Bader, pointing out that the copies of the answers of Fagan, Michael and Randolph that we had received were unsigned and unsworn, demanding that the originals be immediately filed and requesting information as to the execution of the originals (Exhibit K*). At 9:15 A.M. on Monday, September 9, Mr. Bader left a message in my office that he had received that letter and would send "photocopies of original Interrogatory answers within next few days" (see affidavit of Rosalind Rosen annexed to answering affidavit on plaintiffs' motion). Mr. Bader did not then say that he did not have the originals, or some of them, or that the copies had been "inadvertently" sent, but instead, by saying that he would send "photocopies of the original Interrogatory answers", reinforced the impression that he sought to create that he had the originals and would forward proof of that fact by sending photocopies.

(b) On that same day, September 9, 1974, shortly after receiving the aforesaid message, we sent a hand-delivered letter to Mr. Bader stating that unless he filed or permitted inspection of the originals by the end of that day, we would assume that he did not have them on September 5 (Exhibit L). At 9:25 A.M. on September 10, 1974, in response to that letter, my office received another telephone message from Mr. Bader, again stating that he would be send-

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*Reference to Exhibits are, unless otherwise indicated, to those annexed to the moving affidavit on Touche Ross' Rule 37 motion.

ing "photocopies of the original answers" (see affidavit of Muriel Kresh annexed to answering affidavit on plaintiffs' motion). Again he did not say that he did not have originals, or that the copies had been sent "inadvertently", but yet again reinforced the impression sought to be created that he had the originals and would forward proof by sending photocopies.

(c) On September 10, 1974, I personally spoke to Mr. Bader (that conversation is detailed in my answering affidavit on plaintiffs' motion). I told Mr. Bader that I wanted immediately to inspect all the original answers. He said that he had the originals and "you can take my word for it." At no time in that conversation did he say that he did not have all the originals or that the unsworn copies had been sent "inadvertently". As appears from Mr. Nevling's annexed affidavit, when Mr. Bader finally told him on September 11 that he did not have the originals of the answers of Michael and Fagan, he did not tell Mr. Nevling that the copies had been sent "inadvertently".

FACTS WITH RESPECT TO PLAINTIFFS' MOTION FOR AN EXTENSION OF TIME

One can examine Mr. Bader's affirmation and Mr. Sands' affidavit in vain for any showing of "excusable neglect" in the failure of Fagan and Michael to serve timely answers pursuant to the order of August 16, 1974. Indeed, if Mr. Sands' affidavit is to be credited, the reason plaintiffs did not obey Judge Owen's direction that the Interrogatories be answered by February 5, 1974, and made no effort in that

direction for over 5 months, was because Mr. Sands "determined that the League [IIPL] should not go ahead with an active role in this action until the SEC investigation [of Teleprompter] was concluded"! One can hardly imagine a more deliberate defiance of a Court order. Further, Mr. Sand' statements have nothing to do with the failure of Fagan and Michael to serve timely responses pursuant to the further order of August 16, 1974.

Mr. Sands says that Mr. Bader told him he had an "'open ended' stipulation" with defendants extending defendants' time to answer or move with respect to the complaint until the interrogatories were served. Even if this were so, it would have nothing to do with this situation. Further, the statements are not correct. Judge Owen by order extended defendants' time to answer or move until 30 days after the Interrogatories were answered -- and they still have not been.

Mr. Bader and Mr. Sands say that Michael's answers (but not Fagan's) have been received and filed -- as though that ends the matter. Of course, it does not. Those answers are dated September 16, 1974. No leave to serve those late answers has been given and none should be given. There has been no showing of "excusable neglect" and no compliance with the requirements of Rule 6(b) FRCP, as shown by our answering affidavit on plaintiffs' motion and our accompanying memorandum of law.

There are further reasons why no leave to serve Michael's answers should be given. Thus:

(a) Those answers are in effect unsworn answers. While Michael says that his only address is in Vermont, the answers purport to be sworn to in Connecticut. A name is signed in the space for a notary, but there is no indication that the person is a notary. There is no notary's stamp, no indication of a commission, no County Clerk's certificate attesting to the notary's authority. There is thus nothing to show that these are sworn answers. Further, Rule 15 of the Civil Rules of this Court provides that, where specific provision is not made with respect to a procedural question in the Federal statutes or rules (and analogies thereto cannot be found), the Court may apply the procedure previously followed by federal courts in equity or the procedure prevailing in the Supreme Court of the State of New York. We know of no provisions in, or analogies that may be made to, any Federal statutes or rules respecting verifications outside the State of New York. However, New York Civil Practice Law and Rules §§2309(c) provides that an out-of-state oath can be accepted only if accompanied by a certificate that would entitle a deed acknowledged without the state to be recorded within the state if such deed had been acknowledged before the officer who administered the oath. Michael's purported answers dated September 18 do not conform to these requirements.

(b) Michael's answers are not responsive to the Interrogatories in a number of respects. For example, it shows only one purchase of stock and states that the stock so purchased has not been sold. It does not set forth whether

there were other purchases and sales (and, if so, the required information with respect thereto) and it does not set forth the name in which the shares were or are held -- all as required by Interrogatory 9 addressed to Michael.

Mr. Bader engages in his affirmation (p.3) in an exegesis to demonstrate that Fagan's and Michael's answers were not due until September 11, 1974, when plaintiffs made their motion for an extension of time. There is no substance to those contentions. Judge Owen on August 16, 1974 orally directed in Mr. Bader's presence that the answers be served within 20 days, i.e., by September 5 and so endorsed the motion papers at that time. Mr. Bader contends that, because notice of the order was sent by mail, that gave him three extra days. There is no such rule. Mr. Bader knows there is no such rule because he purported to mail the answers September 5, the 20th day after August 16. Then Mr. Bader states that our demand to see the originals (which he did not have) "constituted, in effect,a stipulation" extending the time to September 11, the day he was forced to permit the inspection. We do not think such a contention warrants an answer. It is inconceivable that a demand that originals (which were non-existent) be filed or an immediate inspection be permitted to determine whether the answers had been timely served "constituted, in effect, a stipulation" extending plaintiffs' time for any purpose.

FACTS WITH RESPECT TO TOUCHE ROSS' RULE 37 MOTION TO DISMISS

There is no need to deal further with Fagan or Michael,

who failed to file timely answers.

Randolph

Mr. Bader says in his affirmation (p. 3) that we admit that Randolph's answers were served on September 6 (sic). We admit no such thing. We admit only that on September 5 there were mailed to us unsigned and unsworn copies of what purported to be answers of Randolph (Exhibit H). In our supplemental affidavit on the motion to dismiss, we showed that there was no proof that Randolph's signed and sworn answers were in Mr. Bader's possession on September 5 and there is every reason to believe they were not. We there also showed that Mr. Bader's letter of September 11 to the Court indicated that he claimed not to have seen Randolph's answers until September 10. That was the day he served them (see Exhibit 1 to Mr. Nevling's affidavit, part of the moving papers on the motion to dismiss).

Now comes Mr. Sands to say that Randolph's answers arrived in Mr. Bader's office "late in the day" of September 5. We question that statement as we before questioned other statements of Mr. Sands. There is no reasonable explanation why, if Randolph's signed and sworn answers were received on September 5, they were not served that day and were not served until the evening of September 10 and were not filed until September 11, 1974. We have every reason to believe that unsigned and unsworn copies of Randolph's purported answers were mailed to us on September 5, together with such copies of Fagan's and Michael's purported answers, to

deceive us as to Randolph as we were to be deceived as to Fagan and Michael.

We have also showed on the motion to dismiss (moving affidavit, pp. 11-14) that even if Randolph's answers be considered timely, he has failed to answer the Interrogatories as directed by the Court and the motion to dismiss should be granted as to him.

Mr. Bader's affirmation and Mr. Sands' affidavit simply add further reasons why the motion to dismiss as to Randolph should be granted. That affirmation and affidavit state that Randolph's sworn answers are incorrect. Among the grounds that we advanced for dismissal as to Randolph was that his answers are incomplete, that they are evasive, and that they are conflicting. We showed in the moving affidavit and in our memorandum of law that such answers constitute a "failure to answer" under Rule 37(a)(3), and that such a failure to answer mandates dismissal.

Mr. Sands now annexes to his affidavit what purport to be Randolph's records as to his purchases and sales. These confirm that his sworn answers are incomplete (not including a substantial number of his purchases and sales, the number of shares, if any, of Teleprompter presently owned by him, or the name in which the shares were or are held by him), evasive, and conflicting (we now have three different versions of Randolph's alleged stockholdings). Mr. Bader states (p. 3) that "there seems to be some error

in the Randolph answers" and suggests that we should "make appropriate capital of this fact at the trial of this action." Mr. Sands says (p.3), "There is some variance between these [Randolph's] confirmations and the information supplied in the answers to interrogatories of Randolph.... If they are inaccurate the defendants are at liberty to make any application to the Court that they so desire."

We have made that application -- the motion to dismiss under Rules 37(b) and (d). As our memorandum shows, that is the appropriate remedy when answers to interrogatories are incomplete and evasive; for in truth such answers are no answers at all.

The confirmation by Messrs. Bader and Sands of the fact that Randolph's sworn answers, given after the Interrogatories were outstanding over 10 months, are in fact what we claim them to be, mandates dismissal as to him.

IIPL

We demonstrated in the moving affidavit (pp. 7-11) that the complaint should be dismissed as to IIPL because it has ignored the order of the Court of August 16, 1974. On the motion under Rule 37(a) leading to that order, we showed that the IIPL's original answers failed to respond to Interrogatory 5, and the Court ordered IIPL to respond thereto "separately and fully." However, all that IIPL did in the Further Answers were in substance to repeat its prior answers, and supplied none of the missing information which the Court ordered it to supply.

This is not denied by either Mr. Bader or Mr. Sands. All they say is that the information given is all that is shown by IIPL's files. As our memorandum of law shows, this is no excuse. IIPL said the same thing on the Rule 37(a) motion, but the Court ordered it to supply the information. Our memorandum shows that IIPL was required to make reasonable efforts to secure the information from its members, and that, if it failed to do so, dismissal is warranted. IIPL admittedly made no such efforts. Its present answers are in substance no different from its original answers. IIPL has ignored the order of the Court, and the complaint should be dismissed as to it.

OTHER MATTERS

Mr. Bader says that he anticipates discovery difficulties and asks that the matter be referred to a Magistrate. This subject should not be considered until the motion to dismiss is decided. If that motion is granted, there will be no discovery. The matters dealt with on the pending motions are serious; they are more than "discovery" matters. They should be dealt with by the Court directly.

Sworn to before me this
20th day of September, 1974.

Lawrence R. Eno
LAWRENCE R. ENO

Evelyn Messinger
Notary Public

EVELYN MESSINGER
NOTARY PUBLIC, State of New York
No. 31-7912345
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

----------X

73 CIV. 4133(RO)

AFFIDAVIT

STATE OF NEW YORK
COUNTY OF NEW YORK } SS.:

JAMES K. NEVLING, JR., being duly sworn, deposes and says:

In my affidavit of September 13, 1974, which is part of Touche Ross's Rule 37 motion to dismiss, I set forth the substance of my conversation with Mr. Bader in his office on the morning of September 11, 1974. In that conversation, Mr. Bader did not tell me that the unsigned and unsworn copies of the answers of the individual plaintiffs had been mailed to our firm through inadvertence.

James K. Nevling, Jr.

Sworn to before me this
20th day of September, 1974.

Arnold I. Roth

ARNOLD I. ROTH
NOTARY PUBLIC, State of New York
No. 60-8672740 Qualified in Westchester Co.
Certificate filed in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,	:	
Plaintiffs,	:	73 Civ. 4133 (RO)
-against-	:	
TELEPROMPTER CORP. et al.,	:	ORDER TO SHOW CAUSE
Defendants.	:	WITH A STAY

- -x

Upon the annexed affidavit of Lawrence R. Eno, sworn to September 23, 1974, and the prior proceedings herein,

Let the plaintiffs show cause before Hon. Richard Owen, U.S.D.J., in Room 2804 of the United States Courthouse, Foley Square, New York, New York at 2:15 P.M. on October 4, 1974, or as soon thereafter as counsel can be heard, why an order, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, should not be made (a) staying all discovery by plaintiffs (and particularly the deposition of defendant Touche Ross & Co. noticed for September 30, 1974) and (b) extending the time for defendant Touche Ross & Co. to object to plaintiffs' demand for production of documents by defendant Touche Ross & Co. and plaintiffs' interrogatories to defendant Touche Ross & Co. dated September 11, 1974 until 30 days after the expiration of the time of defendant Touche Ross & Co. to answer or move with respect to the amended complaint; and it is further

R.O.

ORDERED, that all discovery by plaintiffs be and the same hereby is stayed, and the time of defendant Touche Ross & Co. to object as aforesaid be and the same hereby is ex-

R.O.

tended, until the determination of this motion; and it is further

ORDERED, that service of this order to show cause, by serving copies thereof and of the papers on which it is based, personally on plaintiffs' attorneys on or before 5:00 P.M. on September 24, 1974, shall be sufficient..

R.O.

Dated: September 23, 1974.
ISSUED 2:50 P.M

S/ Richard Owen
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

- -x

73 Civ. 4133 (RO)

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co. ("Touche Ross"). I make this affidavit in support of Touche Ross' motion for a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

2. There is presently pending before the Court a motion by Touche Ross, pursuant to Rules 37 (b) and (d), to dismiss the amended complaint as to each of the plaintiffs. On September 20, 1974, the Court granted that motion with respect to plaintiffs Gary Michael and Michael Fagan, and has sub judice the dismissal with respect to Independent Investor Protective League and Martin F. Randolph, Jr..

3. As part of the aforesaid Rule 37 motion, Touche Ross demonstrated that plaintiffs' attorneys had resorted to a deceptive device to mislead us into believing that

timely responses had been made to Touche Ross' Interrogatories dated November 1, 1973 ("the Touche Ross Interrogatories"), when in fact timely responses had not been made.

4. That deceptive device was exposed on September 11, 1974 when plaintiffs' attorneys were compelled to permit inspection of the originals of those purported responses, which originals they did not have. That inspection was made by James K. Nevling, Jr., Esq., an associate of our firm. At the time when Mr. Nevling appeared for such inspection, he was handed by I. Walter Bader, Esq., one of plaintiffs' counsel, (a) a notice for the taking of Touche Ross' deposition on September 30, 1974 with an extensive demand for the production of documents, and (b) a set of interrogatories dated September 11, 1974 addressed to Touche Ross. Copies of that notice and of those interrogatories are annexed hereto as Exhibits A and B respectively. In an affidavit which is part of Touche Ross' Rule 37 motion to dismiss, Mr. Nevling has set forth the threatening statements made to him at that time by Mr. Bader.

5. Plaintiffs' notice of deposition and interrogatories were served despite prior directions of the Court staying discovery by plaintiffs. This case was originally assigned to Hon. Thomas P. Griesa, U.S.D.J. On December 12, 1973, Judge Griesa dismissed the original complaint as legally insufficient with leave to replead. At that time, plaintiffs had outstanding interrogatories addressed to

Touche Ross, a copy of which is annexed hereto as Exhibit C. Plaintiffs had also served a notice for the deposition of Teleprompter Corp. There were also outstanding Touche Ross' Interrogatories to plaintiffs. Judge Griesa at that time directed that plaintiffs' discovery not proceed.

After this case was assigned to Judge Owen, and at a conference with him on January 30, 1974, the proceedings before Judge Griesa were reviewed. At that time the amended complaint had been served but the Touche Ross Interrogatories had not been answered. The Court then continued the ruling of Judge Griesa; and directed plaintiffs to answer Touche Ross' Interrogatories, which were to be answered by February 5, 1974, and gave defendants a reasonable time (later specified as 30 days) after the plaintiffs had answered Touche Ross' Interrogatories to answer or move with respect to the amended complaint. Meanwhile, discovery by plaintiffs was not to proceed. Touche Ross' Interrogatories have not yet been answered. Touche Ross' time to answer or move with respect to the amended complaint has now been extended until such time as the Court may fix on determination of the pending Rule 37 motion to dismiss.

For this reason alone, the motion should be granted.

6. In addition, of course, there is the pendency of Touche Ross' Rule 37 motion to dismiss. Should that motion be granted <u>in toto</u>, the notice of deposition of Touche Ross and interrogatories to Touche Ross will become

nugatory, and Touche Ross should not be required to address itself to those documents in any way prior to decision of the motion to dismiss and, in any event, prior to a determination of the sufficiency of the amended complaint.

7. An order to show cause is prayed for because the time is too short to bring on this motion in regular course prior to September 30, 1974, the time when Touche Ross' deposition has been noticed by plaintiffs. While the notice of deposition was served September 11, 1974, we were occupied in that interval with bringing on and implementing Touche Ross' Rule 37 motion to dismiss and in answering plaintiffs' motion for an extension of time under Rule 6 (b), both of which were argued on September 20, 1974. There has been no prior application for the relief sought herein.

Sworn to before me this
23rd day of September, 1974.

Lawrence R. Eno
LAWRENCE R. ENO

Steven F. Miller
Notary Public

STEVEN F. MILLER
Notary Public, State of New York
No. 31-4501950
Qualified in New York County
Term Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et. al.

Plaintiffs

against

Civil Action
73 Civil 4133
RO

TELEPROMPTER CORP. et. al.

Defendants

NOTICE OF TAKING TESTIMONY

NOTICE IS HEREBY GIVEN that the deposition of the defendant TOUCHE, ROSS & COMPANY, by its deisgnated Officer, agent and/or employee familiar with the facts, will be taken as an Adverse Party, before Trial, as provided by the Federal Rules of Civil Procedure.

NOTICE is further given that the said party is to designate the proper individual to be examined as provided by said Rules.

NOTICE is further given that the said party is to produce, on said deposition, the following books, records, and documents.

1-All work papers with respect to all audits conducted by the said TOUCHE ROSS & COMPANY of TELEPROMPTER CORPORATION which resulted in the certifications made on all financial reports of TELEPROMPTER CORPORATION by the said

EXHIBIT A

TOUCHE ROSS & COMPANY from October 1971 to date.

2- All specific records with respect to the following matters from October 1971 to date.

a- The number of miles of cable laid by the defendant TELEPROMPTER CORPORATION.

b- The Oakland Cable TV franchise.

c- All records of cancellations by customers of service of TELEPROMPTER CORPORATION.

d- Records of contributions made by TELEPROMPTI CORPORATION to MTCA.

e- All capitalized expenses.

3- All specific records with respect to all disciplinai or any other proceedings commenced by the Securities and Exchange Commission against the defendant TOUCHE ROSS & COMPANY with respect to (1) accounting quality of work, (2) misrepresentations of audits, (3) any other matters relating to accounting.

The depositions will be taken on September 30th, 1974 at 10 o'clock in the forenoon, at the United States District Courthouse, Southern District of New York, Room 601, Foley Square, New York, N.Y. You are invited to attend and cross-examine.

NOTICE is further given that upon failure of said parties to appear as demanded we shall take the proceedings provided under the Federal Rules of Civil Procedure.

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York, NY 10016

TO: ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL
Attorneys for TOUCHE ROSS & COMPANY
575 Madison Avenue
New York NY 10022

SHEA GOULD, CLIMENKO etc.
Attorneys for defendant TELEPROMPTER CORPORATION
330 Madison Avenue
New York NY 10017

LAWLER STERLING & KENT, Esqs.
Attorneys for defendant SCHLAFLY etc.
500 Fifth Avenue
New York NY 10036

MARKEWICH ROSENHAUS, etc.
Attorneys for named defendants
350 Fifth Avenue
New York NY 10001

CERTIFICATE OF SERVICE

I hereby certify that on September 9th,,1974 I served a copy of the foregoing Notice of Taking Testimony upon all attorneys for the defendant listed above with the exception of Messrs. Rosenman Colin. Thus under penalties of perjury pursuant to New York CPLR.

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE
LEAGUE et. al.

Plaintiffs

against

Civil Action
73 Civil 4133 RO

TELEPROMPTER [illegible]TION et. al.

Defendants

FIRST INTERROGATORIES TO DEFENDANT TOUCHE ROSS & COMPANY

The following interrogatories are propounded to the defendant TOUCHE ROSS & COMPANY to be answered fully and completely under oath within thirty (30) days of the date of service of these interrogatories upon you. The interrogatories are as follows:

1- Set forth your name, residence address, and position with the defendant TOUCHE ROSS & COMPANY.

2- State the period of time since TOUCHE ROSS & COMPANY has been the independent accountants for the defendant TELEPROMPTER CORPORATION. In connection with your answer state if TOUCHE ROSS & COMPANY is still the independent accountants for the defendant TELEPROMPTER CORPORATION.

3- State whether TOUCHE ROSS & COMPANY prepared the following financial statements.

a- Financial statements submitted in connection with the 1970 annual report of TELEPROMPTER CORPORATION.

b- Financial statements submitted in

EXHIBIT B

connection with the 1971 annual report of TELEPROMPTER CORPORATION.

c- Financial statements submitted in connection with the 1972 annual report of TELEPROMPTER CORPORATION.

d- Financial statements submitted in connection with the 1973 annual report of TELEPROMPTER CORPORATION.

e- 10K SEC report for 1971.

f- 10K SEC report for 1972.

g- 10K SEC report for 1973.

4- If the answer to interrogatory #3 is in the affirmative, either in whole or in part, annex copies of the financial statements so prepared or state where said financial statements can be inspected.

5- Did TOUCHE ROSS & COMPANY prepare any other financial statements for TELEPROMPTER CORPORATION from 1971 to date.

6- If the answer to interrogatory #5 is in the affirmative set forth copies of each of such financial statements so prepared or state where said financial statements can be inspected.

7- State the amount of fees paid TOUCHE ROSS & COMPANY for accounting services by TELEPROMPTER CORPORATION by year for 1971, 1972, 1973.

8- State where the work papers of all audits performed with respect to financial statements of TELEPROMPTER CORPORATION since October 1971 can be inspected.

9- State the names and residence address of all partners agents and employees of TOUCHE ROSS & COMPANY who did any accountin work on any of the financial statements set forth in the answers to

these interrogatories.

10- State the type of accounting controls utilized by TOUCHE ROSS & COMPANY in connection with any financial reports set forth in the answers to these interrogatories in order to insure the accuracy of the figures set forth in said reports.

-11- Set forth the manner in which the defendant TOUCHE ROSS & COMPANY verified the accuracy of the following matters.

a- The construction program of the defendant TELEPROMPTER CORPORATION.

b- The number of miles of cable laid, by the defendant TELEPROMPTER CORPORATION.

c- The number of active accounts of the defendant TELEPROMPTER CORPORATION.

d- The records of contributions made by TELEPROMPTER CORPORATION to the MTCA.

e- The records with respect to the Oakland Cable TV Franchise.

12- Set forth, in detail, and identify all capitalized costs of the defendant TELEPROMPTER CORPORATION in each of the financial statements referred to in the answers to these interrogatories.

13- State the justification for each capitalized cost referred to in the answer to interrogatory #12.

14- State whether there are any other suits, either individual suits or Class Claims against the defendant TOUCHE ROSS & COMPANY relating to accounting services performed by said TOUCHE

ROSS & COMPANY for TELEPROMPTER CORPORATION.

15- If the answer to interrogatory #14 is in the affirmative please state, with respect to each of such suits, (1) the parties, (2) the Court where pending, (3) whether said Claim is a Class Claim and, if so, the specification of the Classes involved, (4) the nature and subject matter of the action.

16- State whether the Securities and Exchange Commission has brought any proceedings against the defendant TOUCHE ROSS & COMPANY by reason of claimed failure to carry out appropriate practices.

17- If the answer to interrogatory 16 is in the affirmative with respect to each such proceeding identify (1) the docket number, (2) the nature of the SEC charges, (3) the result thereof.

18- Is TOUCHE ROSS & COMPANY, with respect to any of its accounting practices, now subject to any sanctions imposed by the SECURITIES AND EXCHANGE COMMISSION.

19- If the answer to interrogatory #18 is in the affirmative set forth, in connection with such sanctions, the nature thereof.

Dated : September 11th, 1974

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York, N.Y. 10016

CERTIFICATE OF SERVICE

I hereby certify, as a member of the Bar of the State of New York, that on September 11th, 1974 I served a copy of the foregoing interrogatories, upon all attorneys other than ROSENMAN COLIN by mail.

* * * *

[Exhibit C to the preceding affidavit is a copy of plaintiffs' Interrogatories to Defendant, Touche, Ross & Company (First Set). It is not reproduced here, but another copy of these interrogatories appears at pp. 369-375 of the Joint Appendix].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,	:	
Plaintiffs,	:	CIVIL ACTION 73 Civil 4133 (RO)
-against-	:	NOTICE
TELEPROMPTER CORP., et al.,	:	
Defendants.	:	

----------x

S I R S :

PLEASE TAKE NOTICE that a hearing has been directed by Hon. Richard Owen, U.S.D.J., into the circumstances relating to the service on September 5, 1974 of purported answers by plaintiff Martin F. Randolph, Jr. to Interrogatories dated November 1, 1973 propounded by defendant Touche Ross & Co. Said hearing will take place on October 11, 1974 at 3:00 P.M. in Room 2804 of the United States Courthouse, Foley Square, New York, New York.

PLEASE TAKE FURTHER NOTICE that at such hearing the undersigned will require the testimony of I. Walton Bader, Esq., Mr. Bader's secretary and Merrill R. Sands; and that there should be produced at such hearing all records, including travel vouchers, tickets and hotel bills, relating to the whereabouts of Mr. Bader on each of the days September 5 to September 11, 1974 inclusive and of Mr. Sands on September 5, 1974.

Dated: New York, New York
September 25, 1974

Yours etc.

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL

By Lawrence R. Eus
A Member of the Firm
575 Madison Avenue
New York, New York 10022
MU 8-7800
Attorneys for Touche Ross & Co.

TO: BADER & BADER, ESQS.
Attorneys for Plaintiffs
274 Madison Avenue
New York, New York 10016

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for defendant Teleprompter Corp.
330 Madison Avenue
New York, New York 10017

LAWLER, STERLING & KENT, ESQS.
Attorneys for defendant Herbert Schlafly
500 Fifth Avenue
New York, New York 10036

MARKEWICH ROSENHAUS MARKEWICH & FRIEDMAN, ESQS.
Attorneys for defendant William J. Bresnan
350 Fifth Avenue
New York, New York 10001

MacMahon

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE,
ET AL.,

Plaintiffs,

73 CIV. 4133

v.

JUDGE MACMAHON

TELEPROMPTER CORP., ET AL.,

Defendants.

----------x

ORDER and
NOTICE OF VOLUNTARY DISMISSAL PURSUANT
TO RULE 41(a)(1)(i) FRCP OF PLAINTIFF MARTIN
F. RANDOLPH, JR. ONLY.

S I R S :

PLEASE TAKE NOTICE that MARTIN F. RANDOLPH, JR., a Plaintiff herein, hereby voluntarily dismisses the above-entitled action, as to him, against all of the Defendants herein.

None of the Defendants have filed either an Answer or a Motion for Summary Judgment in the above-entitled action.

This action continues as a Class Action against all Defendants in behalf of the Plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

Pursuant to Order of JUDGE MACMAHON, this action has been consolidated with other pending actions and PHILIP JONES, ESQ. has been appointed General Counsel for the Plaintiffs in the consolidated actions.

Dated: October 9, 1974

Yours, etc.
BADER and BADER

By: _____
I. Walton Bader
274 Madison Avenue
New York, N.Y. 10016
(212) LE 2-6860
Attorneys for Plaintiff, Martin F. Randolph, Jr.

So ordered: Oct-15-1974
Walter L. McCarthy
U.S.D.J.

TO: HON. RICHARD OWEN,
Judge, U. S. District Court
for the Southern District of New York
U. S. Courthouse, Foley Square
New York, N. Y. 10005

Clerk of the Court, U. S. District Court
for the Southern District of New York
U.S. Courthouse, Foley Square
New York, N. Y. 10007

Messrs. Shea, Gould, Climenko & Kramer
Attorneys for Deft., Teleprompter Corp.
330 Madison Avenue
New York, N. Y. 10017

Messrs. Lawler, Sterling & Kent
Attorneys for Deft., Herbert Schlafly
500 Fifth Avenue
New York, N. Y. 10036

Philip Jones, Esq.
General Counsel for Plaintiffs
845 Third Avenue
New York, N.Y. 10022

TO:

Messrs. Rosenhaus, Markewich,
& Friedman, Esqs.
Attorneys for Deft., William J. Bresnan
350 Fifth Avenue
New York, N. Y. 10001

Messrs. Rosenman, Colin, Kaye,
Petschek, Freund & Emil
Attorneys for Deft., Touche Ross & Co.
575 Madison Avenue
New York, N. Y. 10022

Philip Jones, Esq.
General Counsel for the Plaintiffs
in the Consolidated Actions
845 Third Avenue
New York, N. Y. 10022

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby certify under penalties of perjury, that on October 9, 1974, I mailed a copy of the within document to all of the attorneys for the Defendants and to Philip Jones, Esq.

I. Walton Bader

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MacMahon J.

UNITED STATES DISTRICT COURT
SPUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
JAN 26 1976
S.D. OF N.Y.

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiff

73 civ 4133
L.F.M.

against

TELEPROMPTER CORPORATION

Defendant

MICROFILM
JAN 9 1977

STIPULATION OF SUBSTITUTION OF ATTORNEYS

IT IS HEREBY STIPULATED that ARTHUR KASS, Esq, of Croton Falls, New York be, and he hereby is, substituted for BADER and BADER, Esqs., 274 Madison Avenue, New York, N.Y. as attorney for the plaintiff herein.

Dated: October 13th, 1974

I. Walton Bader
BADER and BADER
Attorneys for Plaintiff
274 Madison Avenue
New York, N.Y. 10016

Arthur Kass
Croton Falls, New York

INDEPENDENT INVESTOR PROTECTIV LEAGUE

by Merrill Sands
Merrill Sands
Secretary

SO ORDERED 1-23-76
Lawrence W. McMahon
U.S.D.J.

SO ORDERED: 10-17-1974
Lawrence W. McMahon
U.S.D.J.

STATE OF NEW YORK
SS:
COUNTY OF WESTCHESTER

Before me personally appeared MERRILL SANDS, by me being duly sworn, who did depose and say that he is the Secretary of INDEPENDENT INVESTOR PROTECTIVE LEAGUE, an unincorporated association of 19 West 24th Street, New York, N.Y. who signed the foregoing instrument in my presence and acknowledged that he did so as his free act and deed and by authority of the Board of Directors of said association, on this 12th day of October 1974.

L. Walton Bader
Notary Public

L. WALTON BADER
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-5140850
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE,etc.

Plaintiff

against

TELEPROMPTER CORPORATION

Defendant

AFFIRMATION OF I.WALTON BADER
CONCERNING SUBSTITUTION OF
ATTORNEYS

STATE OF NEW YORK

COUNTY OF NEW YORK

I.WALTON BADER, affirms the following under penalties of perjury. The undersigned, being a member of the Bar of the State of New York, this affirmation has the force of an affidavit under the laws of the State of New York.

Rule 4(c) of the General Rules of this Court require that an affidavit be submitted with respect to any substitution application and the present posture of the case. Such facts are set forth hereinbelow.

Irreconcilable conflicts have arisen between the undersigned and Mr. Merrill Sands, who is the Secretary of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE. Mr. Sands, at various times, has refused to follow the advice that I gave to him

in connection with this action. Hence, it has been mutually agreed that the undersigned be substituted in this action.

There are no outstanding fees due the undersigned herein.

This action, in combination with approximately seven (7) similar actions have been consolidated before Judge Mac Mahon of this Court, a consolidated complaint will be shortly filed, and Mr. PHILIP JONES has been appointed General Counsel for all actions by Judge Mac Mahon. Insofar as the undersigned is aware this case is not on any calendar for trial at the present time.

There is a pending Rule 37 motion in this action before Judge Owen which has not yet been fully decided.

Dated : October 12th, 1974

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE

Plaintiff

against

TELEPROMPTER CORPORATION et. al.

Defendant

73 Civ. 4133
LFM

==========

ORDER SUBSTITUTING ATTORNEYS

Pursuant to Rule 4(c) of the GENERAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK and upon the annex ed stipulation and affidavit, it is,

ORDERED that ARTHUR KASS,Esq. of Croton Falls, New York, be, and he hereby is, substituted for BADER and BADER,Esqs. of 274 Madison Avenue, New York,N.Y. as attorneys for the plaintiff in this action.

Dated: October 1974

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et. al.

Plaintiffs

73 Civil 4133 LFM

against

TELEPROMPTER CORPORATION et. al.

Defendants

ORDER AND
~~RULE 41~~ NOTICE OF VOLUNTARY
DISMISSAL PURS. TO RULE 41

The remaining plaintiffs herein INDEPENDENT INVESTOR PROTECTIVE LEAGUE and the plaintiffs GARY MICHAEL and MICHAEL FAGAN (if the last-named plaintiffs have not been involuntarily dismissed previously by Judge Owen of this Court) hereby voluntarily dismiss thissuit against all defendants as provided in Rule 41 of the Federal Rules of Civil Procedure since there has not been any Answer filed in this case by any defendant and no Motion for Summary Judgment has been made by any defendant.

Dated : October 28th, 1974

Arthur Kass
ARTHUR KASS
Attorney for Plaintiffs
Croton Falls, New York

So ORDERED: ~~[illegible]~~
1-23-76
Lee P. McMahon
U.S.D.J.

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

ARTHUR KASS, a memberof the Bar of the State of New York, hereby certified under penalties of perjury that on October 28th, 1974 he served copies of the foregoing Notice by mail upon all of the defendants' attorneys.

Arthur Kass
Arthur Kass

MICROFILM
JAN 28 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc., : CIVIL ACTION 73 CIVIL 4133

Plaintiffs, : JUDGE MACMAHON

-against- :

TELEPROMPTER CORP., ET AL., :

Defendants :

----------x

STATE OF : NEW YORK)
) ss.:
COUNTY OF : NEW YORK)

DOROTHY BLACKER, being duly sworn, deposes and says:

I am Secretary to I. WALTON BADER. I am employed on a parttime basis and work only on Tuesdays, Wednesdays and Thursdays of each week from, approximately, 10:30 A. M. to 3:30 P. M.

I am very, very busy with stenographic and dictaphone work and rarely, if ever, have the duty of opening Mr. Bader's mail. My office is located in the very rear of a suite of offices, and the mail is delivered to the front office.

One day I was given an assignment by Mr. Bader regarding the above-entitled case. Mr. Bader subsequently left the office. I typed up the original Interrogatories addressed to, I believe, three people, and also typed up copies of same for the respective attorneys. However, since the original Interrogatories had to be Notarized, I mailed the original Interrogatories to the three people for Notarization and I placed the copies of these Interrogatories which were meant for the Defendants' attorneys in the file, because the copies had to be conformed with the originals when they were subsequently returned, before mailing to the respective attorneys.

I had no further contact whatsoever with the handling of this particular matter, after I had performed the above work.

Dorothy Blacker

Dorothy Blacker

SWORN TO BEFORE ME
THIS 31 DAY OF
OCTOBER, 1974.

I. WALTON BADER
NOTARY PUBLIC, STATE OF NEW YORK
No. 24 5140850
Qualified in New York County
Commission Expires March 30, 19 76

Notary Public.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

HARRY LEWIS,

Plaintiff,

-against-

TELEPROMPTER CORP.,

Defendant.

73 Civ. 3929

----------x

RUBEN TUREK and HARRY SIGAFOOS,

Plaintiffs,

-against-

TELEPROMPTER CORPORATION,

Defendant.

73 Civ. 4109

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INDEPENDENT INVESTOR PROTECTIVE LEAGUE, in behalf of its membership affected and in behalf of the Classes involved herein, GARY MICHAEL, MICHAEL FAGAN and MARTIN F. RANDOLPH, JR. individually and as Class Representatives, and in behalf of all other parties similarly situated and circumstanced,

Plaintiffs,

-against-

TELEPROMPTER CORP., TOUCHE, ROSS & COMPANY, HERBERT SCHLAFLY, WILLIAM BRESNAN, MARVYN CARTON, "JOHN DOE" and "RICHARD DOE" being ficticious, the parties intended being those persons, firms, corporations and associations involved in the unlawful acts set forth herein, and SECURITIES AND EXCHANGE COMMISSION,

Defendants.

ORDER OF CONSOLIDATION

73 Civ. 4133

----------x

PHILIP HELLER and WILMA P. GOTTLIEB, on their own behalf and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

TELEPROMPTER CORP., JACK KENT COOKE, W. J. BRESNAN and J. D. WRATHER, JR.,

Defendants.

73 Civ. 4895

----------x

----------x

HYMAN RADZANOWER,

Plaintiff,

-against- 74 Civ. 3025

TOUCHE, ROSS & CO., TELEPROMPTER CORPORATION, JACK K. COOKE, RAYMOND P. SHAFER, W.J. BRESNAN, H.J. SCHLAFLY, LEONARD TOW, R.C. TODD, JR., B.P. SIMON, J.B. GREEN, L.H. READ, R.G. WILSON, H.E. FLAHERTY, B.D. FISCHMAN, BERLE ADAMS, MARVIN CARTON, R.F. LEWIS, P.L. LOWE, CHARLES LUCKMAN, M.B. MITCHELL, A.E. PUCKETT, J.H. RICHARDSON, M.E. LIVINGSTON, JACK WRATHER and FIRST NATIONAL BANK OF BOSTON,

Defendants.

----------x

STEPHEN BUSH, as Admtr. C/T/A ALEXANDER BUSH, dec'd.,

Plaintiff,

-against- 74 Civ. 3281

TELEPROMPTER CORPORATION, TOUCHE, ROSS & CO., JACK K. COOKE, RAYMOND P. SHAFER, WILLIAM J. BRESNAN, BERLE ADAMS, MARVIN CARTON, RALPH F. LEWIS, PHILIP L. LOWE, CHARLES LUCKMAN, MAURICE B. MITCHELL, ALLEN E. PUCKETT, JOHN H. RICHARDSON, MONTE E. LIVINGSTON, JACK D. WRATHER, J. M. GARTENLAUB, J. R. BARRINGTON, LEONARD TOW, ROBERT C. TODD, JR., LESLIE H. READ, ROGER G. WILSON, HUGH E. FLAHERTY, BERNARD D. FISCHMAN, HUBERT J. SCHLAFLY,

Defendants.

----------x

LEON BRILL,

Plaintiff,

-against- 74 Civ. 4341

JACK KENT COOKE, RAYMOND P. SHAFER, WILLIAM J. BRESNAN, HUBERT J. SCHLAFLY, BERLE ADAMS MARVYN CARTON, RALPH F. LEWIS, PHILIP L. LOWE, CHARLES LUCKMAN, MAURICE B. MITCHELL, ALLEN E. PUCKETT, JOHN H. RICHARDSON, MONTE E. LIVINGSTON, JACK WRATHER, TOUCHE, ROSS & CO. and TELEPROMPTER CORPORATION,

Defendants.

----------x

The Court having held a hearing on September 27, 1974 to determine the most efficient manner in which to conduct these related litigations and having heard counsel for all parties desiring to be heard, and being fully advised in the premises, it is, in the exercise of the Court's discretion,

ORDERED:

1. The above designated actions (sometimes herein "constituent actions") are hereby consolidated for all purposes pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, except that the claims on behalf of plaintiff Stephen Bush asserted in Count Two of the action bearing number 74 Civ. 3281 (the "Bush" action) shall be consolidated for pretrial purposes only.

2. A consolidated complaint shall be prepared and served herein by lead counsel and shall set forth the claims for relief asserted in the constituent actions (except that the claims on behalf of plaintiff Stephen Bush asserted in Count Two of the Bush action shall not be included in such consolidated complaint), such consolidated complaint to be served within thirty (30) days of the date of service of a copy of this order with notice of entry.

3. The firm of Wolf Popper Ross Wolf & Jones is hereby designated as lead counsel for plaintiffs in the constituent actions. Lead counsel shall be in charge of the entire conduct of the consolidated action on behalf of all plaintiffs herein, including the trial and all pretrial procedures and all other proceedings affecting the conduct or disposition of the consolidated action, and shall, without limitation, perform and have the following duties and powers:

(a) To serve upon or receive from defendants all leagal or other papers, notices and motions herein;

(b) To act as spokesman for plaintiffs at pretrial conferences and hearings;

(c) To initiate and conduct all discovery, motions, and other actions relating to pretrial proceedings on behalf of plaintiffs;

(d) To enter into and conduct settlement negotiations with defendants;

(e) To perform such other functions as may be consistent with the foregoing or authorized by the Court. All examinations before trial and other depositions of witnesses or parties taken on behalf of plaintiffs shall be conducted by lead counsel; the respective attorneys of record for the plaintiffs, other than lead counsel, shall be given notice thereof by lead counsel and shall have the right to attend the same, and upon the conclusion of the testimony of each witness or party, such attorneys shall have the right to suggest additional questions to be propounded by lead counsel, in its discretion, to the witness or party. The respective attorneys for the plaintiffs, other than lead counsel, shall have such right to participate in the trial of the consolidated action as the Court may allow.

4. The consolidation hereby ordered shall be without prejudice (a) to any proceedings and orders heretofore had in any of the constituent actions, and (b) with respect to constituent action bearing number 73 Civ. 4133, to any order that may be made by Hon. Richard Owen, U.S.D.J., in proceedings pending before him. All motions to determine class action status pursuant to Rule 23 of the Federal Rules of Civil Procedure

pending in the constituent actions are hereby withdrawn without prejudice and are subject to renewal as hereinafter provided.

5. All papers hereafter filed shall be captioned as follows:

HARRY LEWIS, et al.,	
Plaintiffs,	73 Civ. 3929 73 Civ. 4109 73 Civ. 4133 73 Civ. 4895 73 Civ. 3035 74 Civ. 3281 74 Civ. 4341
v.	
TELEPROMPTER CORP., et al.,	
Defendants.	Consolidated Action

A copy of this order shall be filed in each of the constituent actions. The Clerk thereafter shall maintain a docket only in Action No. 73 Civ. 3929.

6. Defendants shall serve and file their respective answers to the consolidated complaint, or otherwise move with respect thereto, within twenty (20) days after service thereof. Defendants shall serve and file their answers to Count Two of the Bush complaint, or otherwise move with respect thereto, within twenty (20) days of the date of service of a copy of this order with notice of entry. Within twenty (20) days of service of the consolidated complaint, lead counsel shall, on behalf of plaintiffs, serve and file a motion pursuant to Rule 23 of the Federal Rules of Civil Procedure to determine whether the consolidated action may be maintained as a class action.

7. All present and former stockholders of Teleprompter Corp. (other than plaintiffs in the constituent actions) shall be and are hereby stayed from commencing or continuing any derivative or representative actions, suits or proceedings in this Court, with respect to Teleprompter Corp. against Teleprompter Corp. and the other defendants named in the

constituent actions and from proceeding with any such actions, suits or proceedings commenced on or after the date of entry of this order, based upon any of the transactions complained of in the constituent actions, and the service of a copy of this order upon the attorneys for plaintiffs or plaintiffs in such action other than the plaintiffs in this consolidated action, shall be sufficient notice of this stay.

8. Each of the plaintiffs in the constituent actions herein shall bear a proportionate share of all costs, expenses and disbursements hereafter incurred by lead counsel in the consolidated action.

Dated: New York, New York
November 15, 1974

s/ L. F. McMahon
U. S. D. J.

December 19, 1974

Hon. Richard Owen
United States Courthouse
Foley Square
New York, New York 10007

Re: Independent Investor Protective League
v. Teleprompter Corp. et al.

Dear Judge Owen:

Enclosed please find our memorandum in this matter. We also enclose herewith the originals of Touche Ross' exhibits marked at the hearing and copies of the plaintiff's exhibits.

Respectfully yours,

LRE/mk
enc.

Lawrence R. Eno

cc: I. Walton Bader, Esq.
Arthur Kass, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
etc.

Plaintiffs

against

Civil Action
73 Civil 4133

TELEPROMPTER CORPORATION et. al.

Defendants

SUPPLEMENTAL
AFFIDAVIT OF I.WALTON BADER
ON DEFENDANT TOUCHE ROSS MOTION
UNDER RULE 37 FRCP

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, being duly sworn, deposes and says:

I am the attorney for the plaintiffs herein and am fully familiar with the facts and circumstances of this action.

On January 13th,1975 I received a photo-copy of the Court's notes which were taken on the hearing of the Rule 37 motion on September 20th,1974.

I have compared these notes with the purported memorandum of what was said on the said hearing on September 20th 1974 made by Mr. Eno.

The Court's notes are inconsistent with Mr. Eno's memorandum. Since the Court's notes were taken at the time of the argument by a Judicial Officer whose sole interest is to obtain the truth while Mr. Eno's memorandum was typed by one of his

secretaries subsequent to the time of the hearing it is obvious that, in case of inconsistency, the Court's notes must prevail.

In reading both of these memoranda I cannot conceive of how I could have told the Court that I left my office on September 5th,1974 at 3PM and that Mr. Sands was with me at the time. By my sworn testimony I stated that I had left the office between 12 and 2 PM and that Mr. Sands had left my office earlier that day. Mr. Sands, of course, was with me on September 5th,1974 as I previously have testified.

I did state that the RANDOLPH answers to interrogatories came into my office in the 3 o'clock mail and this is confirmed by the Court's notes. This is, of course, correct and is in accord with my testimony. (Actually, on that day, the "three o'clock mail" stated by the United States Post Office to be delivered between 1:45 PM to 2:30 PM was delivered somewhat earlier than 3PM on September 5th,1974.)

I further cannot conceive how I could have told the Court that I knew the unconformed copies of the RANDOLPH interrogatories were sent at the time that I had a conversation with Mr. Eno on September 10th,1974. This does not appear in the Court's notes. As stated in my testimony I knew this in the evening of September 10th,1974.

The Court's notes further reveal confirmation of my testimony given at the hearings in this matter. I testified that I had made an investigation of the identity of the person who had mailed out the unconformed copies of the RANDOLPH interrogatories and the Court's notes stated that I "Did an awful lot of investigating." This, of course, does not appear in the ENO memorandum of what was purportedly said at the September 20th hearing.

The Court's notes further confirm my testimony to the effect that on September 9th,1974 I received advice from Mr. Sands

that a letter had been received from the ROSENMAN COLIN firm. The Court's notes on this matter read as follows:

"Knew on 9th that Sands said"

This statement concededly made on the September 20th argument does not appear in the ENO memorandum.

The Court's notes do indicate (and the Court so stated during the course of the hearings in this matter) that on the argument of the September 20th,1974 Rule 37 motion I stated to the Court that I had told SANDS on September 5th,1974 that if the answers to the interrogatories came into my office I wanted him to send them out. The Court's notes read as follows on this matter,

> "Bader said to Sands on Sept.5. If answers come in want you to send answers out."

Interestingly enough the record shows a statement by Mr. Eno that the Court, when such statement was made, stated that this was inconsistent with the Sands affidavit submitted at that time (which is, of course, true). The statement involved appears on page 59 of the transcript and reads as follows:

> "Q. And after you made this statement to Judge Owen didn't Judge Owen point out to you that that was not in conformity with Mr. Sands affidavit where Mr. Sands had merely said that he assumed that he could send the answers out when he had received Mr. Randolph's answer?"

The above statement, also, appears in the ENO memorandum and reads as follows:

> "Judge Owen pointed out that this was not in conformity with Sands' affidavit, in which he made no mention of any discussion with Bader about the answers and in which he said he came to the office in the late afternoon and "assumed" that he could send the copies of the answers when he found Randolph's answer."

Based on the above, and considering the testimony of Mr. Sands on page 68 of the transcipt reading as follows I now can

make an assumption of how the error came about. Sands testified that:

> "* * * He (Mr. Bader) said, these (the copies of interrogatory answers) have to go out today, but they can't go out until the answers arrive.* * *"

It is quite possible that I may have stated, on the September 20th 1974 argument that I told Sands that the copies of the answers could not go out until the original answers arrived and that my statement was misconstrued. I further state that, if, in fact, the Court informed me that the representation that I had told Sands to mail the copies of the answers to interrogatories as soon as the original answers had come in was inconsistent with the statements made in the Sands affidavit I would have informed the Court that the statements contained in the affidavit would have to control. It must also be noted that the Sands affidavit was drawn by myself so that the statement involved, if made, would have been inconsistent with the facts.

I next come to the suggestion made in the defendant TOUCHE ROSS' papers that my testimony that I could not have Mr. Scher, of his office staff, take care of the problems which were taken care of by Mr. Sands does not accord with the facts and is not correct. I annex to this affidavit a copy of a letter written by Mr. Scher and signed by me which terminates my association with the firm of RICHARDS & GEIER as of December 20th,1974. The letter clearly shows the difficulties involved between myself and Mr. Scher. My name is no longer on the door at 274 Madison Avenue, New York,N.Y. and I am no longer a partner in RICHARDS & GEIER.

I now come to the suggestion made by Mr. ENO to the effect that, since I was in the Grand Central Area on September 5th, 1974 by my own testimony, I could have mailed the copies of the interrogatory answers at that time. This suggestion does not

even rise to the dignity of circumstantial evidence in the light of the direct testimony of Sands that he, in fact, mailed the copies involved. However, for the information of the Court, the earliest that I could have obtained bus transportation to New York from Newark Airport after I missed my 8:05 PM plane would have been 8:30 PM. This would have brought me to the 40th Street and 8th Avenue bus terminal at about 8:45 to 9PM. Assuming a ten minute walk to 42nd Street and 8th Avenue from the bus terminal and even assuming a direct connection with the 42nd Street crosstown bus this would mean an arrival at Grand Central Terminal at about 9:30 PM. Assuming a ten minute walk to my office at that time and a ten minute walk back plus, let us say, 5 minutes at my office, plus the time necessary to have the night watchman open the door of the building both times for me we must add at least 35 minutes making my arrival at Grand Central about 10:10 PM. At this time, of course, there no longer is any mail collection from the mailboxes in the area so that the answers would not have arrived on September 6th, 1974 as, in fact, they did.

Mr. ENO makes a further suggestion that on September 9th,1974, when I testified that I left for Washington DC on the 11 AM Southern Airways plane (it actually leaves at 10:59AM) from La Guardia Airport, I could have gone to my office in the morning of September 9th,1974, seen Mr. ENO's letter, and made the telephone calls involved. A consideration of the time periods involved shows this to be impossible.

The telephone records introduced by Mr. Eno show that the first call to him was made on September 9th,1974 at 9:15 AM. Assuming the call was completed at, let us say, 9:17 AM I would then have to pick up my automobile which, because of parking

regulations in the area, had to be parked in a parking garage. (Nor could I ignore the regulations and chance a traffic violation, the area is a "tow away zone" and ignoring of the regulations would cause me to lose my car).

Assuming that I would leave my office immediately after completing the telephone call the time consumed by waiting for the elevator and walking to the nearest parking garage would consume at least ten (10) minutes. This would put my arrival at the garage involved at about 9:30 AM. This time, however, is a very busy time and it would be inconceivable that I could obtain delivery of my car before at least 15 additional minutes had passed. This would put the time of my departure for LaGuardia Airport at 9:45AM.

At that time of day, since only one lane of the Queens Midtown Tunnel operates to Queens and extensive traffic delays are present on the New York Side, it is not possible to reach the La Guardia Airport Area before at least one hour from the time of departure. This would put my arrival at the LaGaurdia Airport Area at about 10:45 AM. However the automobile must now be parked. Parking facilities at LaGuardia are in a very sorry state at this time because of the construction of a parking garage. Generally the "close lot" is filled and parking must be performed in the remote lot. There is a bus connection to the terminal but this takes about 15 to 30 minutes. Thus I could not have arrived at the terminal until 11 AM at the earliest, too late to make the 10:59 plane.

The telephone record of September 9th of Mr. ENO also shows another call to have been made at 10:37 AM on that date. To have gone to my office on September 9th, 1974 and to have made the two telephone calls at 9:15AM and 10:37 AM and to have left on the 10:59 plane from LaGuardia Airport would have been impossible.

It is even more interesting to note that, despite the suggestions made by Mr. ENO that my testimony as to my whereabouts on September 9th,1974 is not credible, he himself knew that I was out of my office on that date. His own telephone records show a telephone call made to me on that date.

Finally I have determined that a record does exist showing my attendance at the Federal Power Commission settlement conference in Washington DC on September 9th,1974. Mr. Head, an attorney representing various intervenors in that proceeding, does have a copy of the attendance sheet but did not have it available for me when I attended another meeting in this proceeding on January 9th,1975. I also believe that the well-known law firm of BAKER & BOTTS of Houston Texas, probably has a copy of this list in its possession. Thus my attendance at the September 9th,1974 meeting in Washington DC is clearly established.

WHEREFORE the undersigned prays that the Rule 37 motion made by the defendant TOUCHE ROSS & COMPANY herein be in all respects denied.

I. Walton Bader

I.Walton Bader

Sworn to before me
this 14 day of January 1975

Notary Public

76

EXHIBIT A

December 20, 1974

W. Alexander Scher, Esqs.
274 Madison Avenue
New York, New York

Richards & Geier, Esqs.
274 Madison Avenue
New York, New York

Gentlemen:

This will acknowledge, evidence and confirm the understanding between us with respect to a certain agreement we entered into in 1970, which, among other things, made provision for our association in the practice of patent and trademark law under the firm name (style) of Richards & Geier at 274 Madison Avenue, New York, New York.

That inasmuch as we have failed substantially to fulfill the intended objectives of a joint practice in recent years, and since the undersigned has indicated his present intention of removal from the premises now occupied by you, it is hereby agreed as follows:

1. That I have no claim against you for any present or past remuneration nor any other claim whatsoever arising out of our 1970 agreement or for any other reason.

2. That you have no claim against me for any present or past remuneration nor any other claim whatsoever arising out of our 1970 agreement or for any other reason.

3. That the lease of the premises which has been occupied by us at 274 Madison Avenue, New York, New York, shall henceforth be your sole responsibility without asserting any claim against me whatsoever.

4. I agree not to represent in any manner in the future that I am identified or associated with the firm of Richards & Geier and that said style of Richards & Geier has always been owned by you and that the practice of patent and trademark law conducted under said style has always been owned and controlled by you and has been in recent years and to the present time is owned by you solely.

Kindly indicate your agreement, acceptance and acknowledgment hereto by signing the duplicate copy hereof where indicated.

Very truly yours,

I. WALTON BADER

AGREED, ACCEPTED & ACKNOWLEDGED:

W. Alexander Scher

BEST COPY AVAILABLE

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Investigation of Pennzoil Company - United Gas Pipe Line Company Spin-Off and Related Transactions	)))	Docket No. RP74-87

INTERVENORS' OBJECTIONS TO
PROPOSED SETTLEMENT

January 14, 1975

On December 20, 1974, Pennzoil and United filed a Joint Motion alleging that settlement discussions have resulted in an Agreement between United, Pennzoil and a Drafting Committee appointed by a group of Active Intervenors.

On January 9, 1975, the undersigned, one of the attorneys representing the Intervenors PHILLIP J. STEINBERG and INDEPENDENT INVESTOR PROTECTIVE LEAGUE, appeared at a conference held at the Office of the Interstate Natural Gas Association in Washington, D. C., to discuss the proposed settlement.

The discussions took the entire day of January 9, 1975 and, at the conclusion of the disucssions, it was obvious that the Proposed Agreement was not acceptable to the majority of Intervenors.

At the above conference, the undersigned pointed out that, in any event, the Proposed Agreement was not acceptable to the Intervenors STEINBERG and INDEPENDENT INVESTOR PROTECTIVE LEAGUE by reason of the fact that no provision was made in the Proposed Agreement for protection of the interest of Debenture Holders of Pennzoil who were seriously prejudiced by reason of the fact that such Proposed Agreement would

regularize the "spin-off" of United from Pennzoil and would even worsen the position of the Debenture Holders by cancelling the One Million Shares of Preferred Stock of United which is now held by Pennzoil. Furthermore, Pennzoil has flatly refused to reduce the conversion price of the Common Stock of Pennzoil by reason of the "spin-off" of United.

At a further conference, on January 9, 1975, at about 4:00 P. M., the attorneys for Pennzoil and United flatly refused to make any provision for the Pennzoil Debenture Holders.

It is the position of the Intervenors STEINBERG and INDEPENDENT INVESTOR PROTECTIVE LEAGUE that there is no possibility of a settlement of this proceeding which is being held before the Federal Power Commission, unless the "spin-off" of United is rescinded by the Federal Power Commission.

The record before the Commission amply demonstrates that United, divorced from Pennzoil, will be a far weaker Company than heretofore. As a result, the availability of gas to various customers will be reduced. Furthermore, separation of United from Pennzoil will result in higher natural gas prices and, therefore, would not be in the public interest.

In addition, there is a serious question whether United, standing alone, will be a viable entity.

This Commission must also thoroughly investigate the possible violation of the Natural Gas Act by reason of the United "spin-off".

Under the circumstances, the Intervenors STEINBERG and INDEPENDENT INVESTOR PROTECTIVE LEAGE, respectfully oppose any settlement of this proceeding unless Pennzoil and United

agree to set aside the "spin-off" of United and this position is being transmitted to the Commission for the Commission's information.

Dated: January 14, 1975

Respectfully submitted,

I. Walton Bader

I. Walton Bader
BADER and BADER
Attorneys for Intervenors
Steinberg and
Independent Investor
Protective League
270 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6860

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818 Olive Street
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Steinberg and
Independent Investor
Protective League
New Madrid, Missouri

I. Walton Bader
40 Morrow Avenue
Scarsdale New York

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
et. al.

Plaintiffs

against

Civil Action
73 Civil 4133

TELEPROMPTER CORPORATION, et. al.

Defendants

AFFIDAVIT OF MARTIN F. RANDOLPH, JR.

STATE OF CALIFORNIA
ss:
COUNTY OF SAN DIEGO

MARTIN F. RANDOLPH, JR., being duly sworn, deposes and says:

I am one of the plaintiffs in the above-entitled action and am fully familiar with the facts set forth in this affidavit.

I reside at 4441 1/2 51st Street, San Diego, California.

At the time of the first mail delivery, in the morning of September 3rd, 1974 I received in the mail, from Messrs. BADER and BADER, of New York City, a set of FURTHER ANSWERS TO INTERROGATORIES in the above case.

About 12 noon of that day I took these FURTHER ANSWERS to a Notary Public in San Diego California and signed the same before such notary.

Immediately thereafter I took the signed interrogatory answers to the Andrew Jackson Post Office in San Diego California.

I inserted these FURTHER ANSWERS into an envelope at said Post Office, addressed said envelope to BADER and BADER, 274 Madison Avenue, New York NY 10016, affixed Air Mail Postage thereto and mailed the same at the said Post Office.

The mailing was done no later than 1 PM on September 3rd, 1974.

Martin F. Randolph, Jr.

Sworn to before me
this 4 day of January 1975

Notary Public

OFFICIAL SEAL
ELIZABETH ROBELL
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
MY COMMISSION EXPIRES MAY 17, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

- -x

73 Civil 4133 (RO)

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

In their papers in response to the memorandum submitted by defendant Touche Ross & Co. ("Touche Ross") on this motion under FRCP Rule 37, plaintiffs have made contentions and accusations not supported by facts in the record. If those contentions and accusations are to be considered by the Court, then this affidavit places in the record facts demonstrating the lack of substance to those contentions and accusations. The facts set forth herein appear in context in Touche Ross' Reply Memorandum submitted herewith. Thus, the statements contained herein take on meaning and relevance when considered in that Reply Memorandum.

I

On September 9, 1974, my regular secretary, Mrs. Muriel Kresh, was absent. My office secured a temporary secretary for me for the day from an outside agency. Our

office records show that her name was Florence Dawson. Ms. Dawson came on duty at about 9:30 A.M. I asked her to keep a record of my incoming and outgoing calls; and made up the form of the log for her (Exh. Q). The words on Exh. Q, "Mon. Sept. 9, 1974 Incoming Outgoing" are in my handwriting; and the words "LRE not available" are also in my handwriting and were placed on the log by me sometime later to show that I had not received the 10:37 A.M. call from Mr. Bader. The rest of the handwriting on the log is Ms. Dawson's. I did not tell Ms. Dawson to record the time of incoming calls: she did that on her own except for the call from Mr. Golub (which was an internal call since he is a partner of mine).

The call from Mr. Bader at 9:15 A.M. on September 9, 1974 was received by Ms. Rosalind Rosen, who is not a secretary in our office but who is a receptionist. Ms. Rosen testified at the hearing (Tr. 145-6). Since that call was not taken by Ms. Dawson, it is not on the log she kept.

Mr. Bader's 10:37 A.M. call to our office was received by Ms. Dawson while I was in conference elsewhere in my office. When I returned to my room, Ms. Dawson told me of that call. I asked her to return the call to Mr. Bader at his office and she told me that she could not reach him.

These facts substantially appear in my testimony at Tr. 204-206.

II

My office has checked with Carey Transportation and has been informed by them that in the mornings, including

the morning of September 9, 1974, they run buses from the East Side Airlines Terminal at 37th Street and 1st Avenue to La Guardia Airport every 15 minutes and that the buses arrive at La Guardia about one-half hour after departure. On September 9, Mr. Bader's office was at 274 Madison Avenue, which is between 39th and 40th Streets and Madison Avenue.

III

My office has checked with the Post Office Department and has been advised that an air-mail letter deposited in a letter-box in San Diego, California after 5:30 P.M. on September 3, 1974 would not have been delivered in New York on September 5, 1974.

IV

On the argument before the Court on September 20, 1974, Mr. Bader made no statement that Mr. Sands had been in his office on September 9, 1974. That claim was first made when they so testified at the hearing on November 4, 1974.

V

My firm represented Touche Ross in matters long before the instant suit, or any related suit, involving Teleprompter Corp. ("Teleprompter") was brought; our firm has continued to represent Touche Ross in numerous matters entirely unconnected with Teleprompter; the firm of Shea Gould Climenko & Kramer is not Outside General Counsel for Touche Ross; and that firm had nothing to do with our retainer by Touche Ross.

Sworn to before me this
30th day of January, 1975.

Notary Public

Lawrence R. End
LAWRENCE R. END

MARLENE HERMAN
Notary Public, State of New York
No. 41-6867365
Qualified in Queens County
Commission Expires March 30, 1976

We did not oppose the dismissal referred to but are still awaiting decision from Judge Owen.

EK FREUND & EMIL
ORK, N.Y. 10022

SAMUEL I. ROSENMAN
1896-1973

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H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN

January 30, 1975

Hon. Lloyd F. MacMahon
United States Courthouse
Foley Square
New York, New York 10007

Re: Independent Investor Protective League
v. Teleprompter Corp. et al. 73 Civ. 4133

Dear Judge MacMahon:

We represent Touche Ross & Co. ("Touche Ross"), a defendant in the above-entitled action. The above-entitled action is one of a number of actions involving Teleprompter Corporation which have been consolidated by an order of Your Honor dated November 18, 1974 under the consolidated title "Harry Lewis v. Teleprompter Corp., 73 Civ. 3929."

At the time of the consolidation there were, and there presently are, certain proceedings in this action pending before Hon. Richard Owen, U.S.D.J. Final briefs in those proceedings are presently being submitted to Judge Owen. The order of consolidation expressly provides that the consolidation is "without prejudice ... to any order that may be made by Hon. Richard Owen, U.S.D.J., in proceedings pending before him." This was the understanding announced in open court at the hearing at which consolidation was directed.

Nevertheless, the attorneys for the plaintiffs in the above-entitled action (Messrs. Bader & Bader) some time ago presented ex parte to Your Honor a notice of voluntary dis-

missal as to one of the plaintiffs under Rule 41(a)(1), the purpose of which was to attempt to deprive Judge Owen of jurisdiction; and said notice was "So ordered" without, we are sure, Your Honor being informed of all the circumstances.

The purpose of this letter is to advise the Court that we would appreciate being notified if any other such notice is presented for your signature and, in such event, we respectfully request an opportunity to be heard.

Respectfully yours,

Lawrence R. Eno

LRE/mk

Lawrence R. Eno

cc: Hon. Richard Owen
I. Walton Bader, Esq.
Bader & Bader, Esqs.
Arthur Kass, Esq.
Philip Jones, Esq.

I.WALTON BADER
40 Morrow Avenue 7AS
Scarsdale New York

February 1st,1975

Re: Independent Investor Protective League
vs. Teleprompter Corporation
Civil Action 73 Civil 4133 LFM

U.S. DISTRICT COURT
FILED
JAN 1 1977
S.D. OF N.Y.

Hon. Lloyd F. MacMahon
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York NY 10007

Dear Judge MacMahon,

The undersigned is in receipt of a letter from Mr. Eno of the Rosenman Colin firm which implies that Your Honor was unaware of pending Rule 37 motions before Judge Owen at the time that the Court signed the Rule 41 dismissal notice with respect to the plaintiff RANDOLPH and that, if other dismissal notices are presented to Your Honor that the Rosenman Colin firm be informed of the fact.

The Court, at the time of the consolidation of these actions, was well aware of the pending motion before Judge Owen since the files of all actions were before the Court at that time. Furthermore these motions were referred to at the discussion with respect to consolidation and appointment of lead counsel which took place before Your Honor.

The Notice of Voluntary Dismissal with respect to the plaintiff RANDOLPH was served upon the Rosenman Colin firm at the time that it was presented to the Court and filed with the Clerk thereof. The Rosenman Colin firm did not see fit to make any objection to the filing of this notice. Thus any implication that the Court was unaware of the facts with respect to an "ex parte" filing is simply not correct.

While the plaintiffs do not believe that it is necessary to "so order" the Notice of Voluntary Dismissal this action by the Court was in all respects proper.

Subsequent to the filing of the [illegible] notice [illegible] plaintiffs filed appropriate Notice of Voluntary Dismissal with respect to all of the other plaintiffs in this case, namely the INDPENDENT INVESTOR PROTECTIVE LEAGUE, and MICHAEL and FAGAN. Copies of these notices were served upon the Rosenman Colin firm (and upon the other attorneys in this action). The Rosenman Colin firm objected to the filing of Notices of Voluntary Dismissal with respect to the plaintiffs MICHAEL and FAGAN upon the ground that, on September 20,1974, Judge Owen involuntarily dismissed the complaint against these plaintiffs upon the ground that interrogatory responses were not served on time. Since Judge Owen has not, to my knowledge, issued any formal order dismissing the complaint with respect to the defendants MICHAEL and FAGAN (although he indicated such disposition on the September 20th, 1974 hearing) I would presume that Your Honor is holding these notices pending determination by Judge Owen of the motions before him.

I also would like to advise the Court that lead counsel in this case, Mr. Jones, has filed a consolidated complaint in which he does not make any claim with respect to the plaintiffs in 73 Civil 4133. Therefore, at least in the opinion of lead counsel, this action has been voluntarily dismissed with respect to all plaintiffs.

In the plaintiffs' opinion, therefore, there is no necessity to file any additional papers with Your Honor.

Respectfully,

I.Walton Bader

IWB/wb
cc: Rosenman Colin
Judge Richard Owen
Philip Jones, Esq., lead counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs

against

Civil Action
73 Civil 4133

TELEPROMPTER CORPORATION et. al.

Defendants

AFFIDAVIT OF MERRILL SANDS

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

MERRILL SANDS, being duly sworn, deposes and says:

I am the Secretary of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

The INDEPENDENT INVESTOR PROTECTIVE LEAGUE, a membership organization, is vitally concerned with respect to the pending Rule 37 application since costs and expenses are being sought against it in this proceeding.

I have read the affidavit of LAWRENCE R. ENO, sworn to January 30th, 1975 and wish to reply thereto.

At the outset, I wish to point out to the Court that the burden of proof on the part of the plaintiffs are not to prove that the RANDOLPH answers arrived at the office of the plaintiffs' attorney on September 5th, 1974 but it is the burden of proof on the part of the defendant TOUCHE ROSS & COMPANY to prove that the answers did not arrive at the office of the plaintiffs' attorney on September 5th, 1974.

Furthermore there is no question that the answers of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE were served and mailed on time.

The evidence is overwhelming that the RANDOLPH answers were in the office of the attorney for the plaintiffs on September 5th, 1974. The answers were mailed on September 3rd, 1974 at 1PM directly from the appropriate post office in San Diego California. By normal delivery schedules as shown by the postal information submitted to the court these answers should have arrived on the First Delivery on September 5th. 1974. (They actually arrived on the Third Delivery on that date). THERE IS NO EVIDENCE TO THE CONTRARY THAT HAS BEEN SUBMITTED BY THE DEFENDANT TOUCHE ROSS & COMPANY.

I am extremely concerned with the continuing lack of candor with the Court shown by the defendant TOUCHE ROSS & COMPANY. In the January 30th, 1975 affidavit Mr. Eno states the following:

> "* * * My office has checked with the Post Office Department and has been advised that an air-mail letter deposited in a letter box in San Diego, California after 5:30 PM on September 3, 1974 would not have been delivered on September 5, 1974. (emphasis supplied). * * *"

This is a deliberate and wilful attempt to mislead and trifle with the Court. The RANDOLPH affidavit shows that the answers were mailed at 1 PM on September 3rd, 1974 and from a POST OFFICE in San Diego California. Such unclean hands on the part of the defendant TOUCHE ROSS & COMPANY does not warrant the grant of any relief to this defendant.

The lack of candor with respect to the Court on the part of the defendant TOUCHE ROSS & COMPANY is further demonstrated by the strange circumstances with respect to the alleged telephone calls made on September 9th, 1974. In his testimony Mr. Eno stated the following (Tr. 204-205)

> "* * * In the morning I received the message that has been marked here from Mrs. Rosen, who is a receptionist in our office, * * * When I received that message, your Honor--well, before that--there was apparently another phone call to me from Mr. Bader, and it is my practice to keep a record of my incoming and outgoing calls, and at 10:30 on that morning, according to this record that was kept by the substitute for my secretary, Mr. Bader called.
>
> I was not available * * * and this girl, who I forgot what her name is, reported that she could not get in touch with him.* * *"

Since there were serious questions with respect to the record of the alleged telephone calls (Exhibit Q) the plaintiff's memorandum called this fact to the Court's attention.

An affidavit has now been submitted by Mr. Eno, which is in conflict with the testimony. In the first place the testimony shows Mr. Bader's second alleged telephone call as taking place at 10:30 and not 10:37. The "AM" notation appears to have been placed therein later (note the "squeezing" of this notation in the exhibit). Mr. Eno now states that he met with the temporary secretary (whose name he now conveniently remembers) at 9:30 AM. (Conveniently after the 9:15 telephone call of Mr. Bader). However, since he testified that he received Mr. Bader's 9:15 message after 10:30 on September 9th, he cannot explain why the 9:15 message of the receptionist was not brought to his attention by 9:30. [I suggest that the times involved are contrived].

There is no explanation as to why Florence Dawson was not brought to the hearing. There is no explanation as to why, if the notation of the times of telephone calls was Ms. Dawson's idea how she knew that the call of Mr. Golub was "an internal call" and therefore did not have to record the time. Indeed, if the time recording was her own idea and she was just a temporary secretary, how did she know that Mr. Golub was a partner of Mr. Eno and that the time of this call was not to be recorded.

The further lack of candor is shown by the fact that Mr. Eno deliberately placed the words "LRE not available" on the call records after he knew that this record was to be used in court.

The record is further barren of any excuse for the conflict in the testimony of Mr. Eno that he "forgot what her (Ms. Dawson's) name was" and the statement now contained in the Eno January 30th, 1975 affidavit stating what her name was. [I suggest that Mr. Eno knew her name all along and his failure to disclose the same was to prevent the League from being able to Subpoena this witness and obtain the actual facts.]

The record, even with the "clarifying" affidavit of January 30th, 1975 of Mr. Eno, fails to set forth the name and address of the temporary agency. This, it is submitted, has been deliberately done to again mislead the Court. This also prevents the plaintiffs from obtaining verification from Ms. Dawson of the facts set forth in the Eno affidavit.

But the lack of candor with the Court does not even stop at this point. The defendant TOUCHE ROSS & COMPANY now questions the Judge's notes. The Reply Memorandum claims that the notes

do not contain the single sentence "Knew on 9th that Sands said" but rather two sentences "Knew on 9th ..... Sands said". This interpretation is belied by the fact that there is a double arrow on the left side of the notes indicating a connection between the words involved. [Sands is obviously capitalized because it is a proper name].

Finally I wish to point out that one of the questions in the interrogatories of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE related to the membership list of the League. I am secretary of the League and control the membership list. Mr. Gordon does not. Thus it was necessary that I verify the answers to interrogatories relating to the membership list and Mr. Gordon could not.

WHEREFORE the undersigned prays that the Rule 37 application made by the defendant TOUCHE ROSS & COMPANY be in all respects denied.

Merrill Sands

Sworn to before me
this 4th day of February 1975

I. Walton Bader
Notary Public State of New York
No: 24-5140850
Qualified in New York County
Commission Expires March 30th, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE,
etc.

Plaintiffs

against

Civil Action
73 Civil 4133 LFM

TELEPROMPTER CORPORATION et. al.

Defendants

AFFIRMATION OF I. WALTON BADER

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document has the force of an affidavit under the laws of the State of New York.

The replying affidavit of LAWRENCE R. ENO dated January 30th,1975 contains unique theories of law. It also raises far more questions than it answers.

The first of the defendant TOUCHE ROSS novel theories is the claim that a false affidavit can be submitted with impunity as long as it is "voluntarily" recanted at some point in the proceedings. The ENO affidavit of January 30th,1975 does not state when during the proceedings it was "voluntarily discovered" that the affidavit was false. Certainly this fact must have been known prior to the final minutes of the three day hearings

conducted by the Court in this matter. Indeed the plaintiffs suggest that the falsity of the affidavit involved was known to the defendant TOUCHE ROSS prior to the commencement of the hearings in this matter but that this fact was deliberately kept from the Court until all of the testimony of the witnesses BADER, SANDS, BLACKER, NEVLING etc. was in in the hope that these witnesses might not have recalled that there were, in fact, two envelopes. Indeed, even now Mr. Eno is not candid with the Court in still suggesting that he still does not know which of the four sets of interrogatory answers was placed into each of the (now admitted) two envelopes. A check with the attorneys representing the other defendants in this action would have clearly revealed this, hence the statement by the TOUCHE ROSS defendant's attorney that he did not so check with these attorneys. In any event the testimony of SANDS is clear on the point as to what interrogatory answers went into what envelope.

The ENO affidavit now states what was not known at the time of the hearings, namely that he (ENO) did not make any written memorandum of the statements allegedly made by BADER at the hearing before the Court on September 20th, 1974. Apparently ENO relied on his memory for the so-called "memorandum" containing these statements. This was not clear from the testimony (TR.210) where Mr. Eno stated to the Court as follows:

> " * * * I listened quite intently to what Mr. Bader said to your Honor, and promptly, after returning to my office that day, I dictated a memorandum of what he said.* * *"

The obvious inference, therefore, was that Mr. Eno

had taken notes of what was said to the Court on that day. It is now stated, in a memorandum but not in an affidavit, that Mr. Eno made no notes of the statements purportedly made but that they were dictated from memory. Why this statement is not placed in the January 30th, 1975 affidavit is not clear.

In his testimony ENO stated that he had "forgotten" the name of the alleged temporary secretary to who the notes of telephone messages on September 9th, 1974. In his affidavit ENO gives the name as FLORENCE DAWSON, but, significantly, does not give her address or the name of the temporary agency from whom she was employed. Nor did Mr. Eno produce Ms. Dawson at the hearings (although he did produce his two employees with whom I purportedly spoke on September 9th and 10th, 1974.)

In his affidavit ENO states that Ms. Dawson came on duty at 9:30 AM. This was fifteen minutes after receipt of the telephone call from Mr. Bader at 9:15 AM. ENO further states in his affidavit that the times placed against the telephone calls from Mr. Bader and Mr. Spanier were so done by Ms. Dawson and that he (Mr. Eno) gave no such instructions to Ms. Dawson. He further states that there is no time set forth against the call from "Mr. Golub" because it was an internal call.

It is interestimg to contrast ENO's testimony on this matter at the hearings (Tr. 205)

> Q. I mean there is "Incoming, Mr. Golub," or something like that, "Mr. Spanier," and "outgoing Mr. Bader,"
>
> A. I said everything that I have not identified as mine was in the handwriting of the substitute secretary.* * *"

There is nothing in the testimony to the effect that the call from Mr. Golub was an internal call nor is there any evidence of how Ms. Dawson, a temporary employee, would know that such a call was an internal call or that Mr. Golub was a partner of Mr. Eno's.

We also note that Mr. Eno, concededly, was with Ms. Dawson at 9:30 AM and must have spent some time with her to give her instructions for proceeding. Neverthless ENO admits that he did not receive word of Mr. Bader's 9:15 telephone call until after 10:37 AM.

We also note that while the record shows Mr. Bader's call as arriving at 10:37 AM Mr. Eno testified that it was received at 10:30 AM. Assuming that the conflict is an honest error it neverthless is sufficient to cast doubt upon what Mr. Eno recorded as purportedly occurred at the hearing on September 20th, 1974 before Judge Owen.

The attempt to miselad the Court with respect to the purported check that Mr. Eno made with the post office department (Paragraph III of the Eno affidavit of January 30th, 1975) is, it is submitted, sufficient to permit imposition of sanctions. This is not what Mr. Randolph says with respect to the mailing of the document and Mr. Eno knows it since he comments on the Randolph affidavit in his reply memorandum. Furthermore the person in the post office department with whom he checked is not identified in any manner. Such "evidence" is not even hearsay.

The Replying Memorandum of the defendant TOUCHE ROSS & COMPANY also claims that despite the proof that photocopies of documents had been supplied repeatedly to the attorneys for the defendant TOUCHE ROSS & COMPANY by the attorneys for the plaintiffs in this action the plaintiffs' attorneys still misrepresented in stating that they had "photocopies of the original answers." The use of the word "original" is supposed to clearly show the intent to deceive.

The answer, of course, is that an attorney will not send to an adverse party "photocopies of copies" but obviously will send photocopies of original documents. Thus, even if the word "original" were stated it would be entirely consistent with the facts in this case.

It must be noted, however, that BADER's testimony is not in accord with the above claim. BADER states that the ROSENMAN COLIN firm was told that they would receive copies of the answers. However, if the Court should find that the ROSENMAN COLIN testimony on this point is to be believed, it is pointed out that the requisite proof of misrepresentation is still not present.

Mr. Eno then goes on to contradict the Court's notes in his affidavit and states that the undersigned never told theCourt on September 20th,1974 that Mr. Sands had been in his office on September 9th,1974. Unfortunately, as I testified,I do not recall what occurred at this hearing and only have the Court's notes to refresh my recollection.

Mr. Eno than sates that there is bus service to LaGuardia airport every 15 minutes in the morning from the East Side Airline Terminal at 36th Street and First Avenue. This is as relevant as the alleged statement from the post office department that a letter mailed at 5:30 PM from a letter box in San Diego would not reach New York on September 5th,1974 if mailed on September 3rd,1974. My testimony was that I had an automobile and had driven to La Guardia Airport from Scarsdale New York on September 6th,1974. However, it is my experience that, in the morning, the bus travel time from the East Side Airlines Terminal to Law Guardia Airport is closer to one hour than to one half hour. However between 39th Street and Madison Avenue and 36th Street and Madison Avenue are three street blocks and five avenue blocks. Normal walking time from my office to the Airline Terminal would be about thirty minutes. Assuming that the 9:15 call was made from my office,therefore, I could not have reached the street before 9:30 AM. Add 30 minutes walking time and my arrival at the Airlines Terminal would be about 10:AM. Assuming a departure on the 10:15 AM bus (and arrival at LaGuardia at, let us say 10:45AM) it would have been impossible to have made the 10:37 telephone call purportedly received by ROSENMAN COLIN.

There is, however, a more interesting fact concerning Ms. Dawson. According to Mr. Eno Ms. Dawson received my telephone call of 10:37 AM on September 9th, 1974. In my letter to the Court of September 11th, 1974 I stated that I had informed the Rosenman Colin firm with respect to the interrogatory answers involved. It is possible that the person at Rosenman Colin with whom I spoke could have been Ms. Dawson (If Mr. Eno is correct about the second call). Thus my testimony is again confirmed in all respects.

Mr. Eno then states, in his memorandum, that I have not been candid with the Court in stating the following:

> "* * * Finally the Court is advised that in Twenty-Seven years of practice before this Bar this is the first time that I have ever been accused of violations of the Rules of this Court and threatened with criminal contemot and disciplinary action.* * * (emphasis supplied)

Mr. Eno cites United Sheepolined Clothing Co., Inc. vs. Arctic Fur Cap Corp. 165 Fed. Supp. 193 as showing that I am no stranger to Rule 37 proceedings.

This case was decided in 1958 (about seventeen years ago). It primarily involved a fee dispute between myself and my client and involved my alleged failure to notify the client of the pendency of a deposition. Judge Dawson imposed expenses in this matter of $50.00, The significant part of the decision appears on page 194 and reads as follows:

> " * * He (Mr. Bader) admitted that he had not notified his client of the taking of the deposition. He stated that he had not appeared at the time set for the taking of the deposition, nor had he appeared on this motion, because of the fact that the defendant had told him it would not be able to pay him any fee * * * (emphasis supplied).

While I do not agree with Judge Dawson that I had any duty to the defendant in that case since he refused to pay a fee, this case is hardly one where I was threatened with criminal contempt or disciplinary action. I daresay that Mr. Eno, and his firm, have been involved in cases wherein Rule 37 costs and expenses have been imposed upon them in proceedings.

We now come to the real issue in this case which involves Rule 37 sanctions. Rule 37 relief in discovery proceedings are generally a matter of the Court's discretion. In the case at bar, of course, if Rule 37 sanctions are to be imposed the Court must find (1) that the plaintiffs failed to answer interrogatories within the time allowed and (2) that the defendant TOUCHE ROSS & COMPANY was prejudiced by any delay and (3) that the answers are insufficient and wilfully insufficient. The Court can, of course, impose Rule 37 costs, expenses and attorneys fees if it finds that the conduct of the defendant prejudiced the plaintiffs.

In the instant case there is no question that the answers of the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE were filed in time (and the defendant TOUCHE ROSS & COMPANY does not dispute this). The RANDOLPH affidavit, the post office correspondence and the SANDS testimony establishes, beyond a doubt, that the answers to interrogatories of RANDOLPH were received by the plaintiffs' attorney on September 5th, 1974. Thus, insofar as the plaintiffs INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH are concerned there is no question that Rule 37 sanctions are inappropriate.

It is further conceded that the knowledge that the MICHAEL and FAGAN answers to interrogatories were not received on September 5th, 1974 was known to the defendant TOUCHE ROSS &

COMPANY at least two days prior to the making of a Rule 37 motion. Thus Rule 37 sanctions are inappropriate as well in this case.

The MICHAEL answers, however, were received prior to the hearing on the defendant TOUCHE ROSS & COMPANY Rule 37 motion. Neverthless the Court denied the plaintiffs' motion for an extension of time and dismissed the Complaint as to MICHAEL. Where a Court dismisses a complaint under Rule 37 it cannot, in addition, impose costs and expenses.

Judge Brown, who is Chief Judge of the United States District Court for the Western District of Tennessee, and before whom, parenthetically, the undersigned tried a patent infringement matter which was decided against my client and, after the grant of certiorari by the Supreme Court of the United States, was affirmed by an equally divided Supreme Court, had the precise question before him in Armour & Co. vs Enenco Inc. 17 Fed Rules Serv. (2nd) 514 (1973) where the Court said:

> " * * * We conclude that, factually, these expenses are not caused by the involved misconduct and further that it would be unjust to award expenses here. Since we are herein ruling that Enenco is entitled to a judgment in its favor on all issues and since it does not appear that Enenco's expenses would have been any less had Armour cooperated in discovery and the litigation had proceeded to conclusion with Enenco prevailing, we cannot find that Enenco;s expenses in any wise resulted from Armour's counsel's misconduct and we cannot find that it would be just to award expenses to Enenco.* * *"

Furthermore, in discovery matters, the granting of a default judgment by reason of the alleged failure to comply with discovery is very sparingly exercised. See, for example, Gill vs.

Stolow, 2Cir.,240 Fed.(2nd)669; Vac-Air.Inc. vs. John Mohr & Sons, Inc., 471 Fed.(2nd) 231 and GFI Computer Industries.Inc. vs. Fry, 476 Fed.(2nd) 1.

It is conceded that the record in this case shows no prejudice on the part of the defendant TOUCHE ROSS & COMPANY by reason of the late filing of the MICHAEL answers. The Court, on Setpember 20th,1974, by reason of the non-filing of the FAGAN answers, dismissed the Complaint as to FAGAN. The RANDOLPH answers were duly served prior to the making of the Rule 37 motion by the defendant TOUCHE ROSS & COMPANY and subsequent to the making of a motion by the plaintiffs for an extension of time with respect to the MICHAEL and FAGAN answers. Thus AT THE TIME OF THE HEARINGS HELD WHICH WERE SPECIFICALLY DIRECTED TO THE DATE OF RECEIPT OF THE RANDOLPH ANSWERS IN THE OFFICE OF THE ATTORNEY FOR THE PLAINTIFFS THE RANDOLPH ANSWERS HAD ALREADY BEEN IN THE DEFENDANT TOUCHE ROSS' HANDS FOR A CONSIDERABLE PERIOD AND THESE ANSWERS WERE IN THE HANDS OF THEIR ATTORNEYS PRIOR TO THE MAKING BY THEM OF THE RULE 37 MOTION.

Generally, if the Court grants judgment against a party, it will not award expenses as well (Cf. Armour & Co. vs Energo.Inc., supra). However, with respect to RANDOLPH, the record is clear that these answers were received by the plaintiffs' attorneys on September 5th,1974.Also, in this case, there is a conceded false affidavit made by the defendant TOUCHE ROSS' attorney with respect to the number of envelopes in which the answers were received. There is also considerable evidence by the defendant TOUCHE ROSS' conduct in these proceedings of lack of candor with the Court. Hence, it is submitted, if expenses are to be imposed upon any party they should be imposed upon the defendant TOUCHE ROSS (but the expenses

should be limited to the costs, expenses and attorneys fees incurred by the plaintiffs from the date of commencement of the hearings in this matter forward.

Dated : February 10th, 1975

L. Walton Bader

L.Walton Bader

point an umpire. This umpire must, of course, consider very carefully whether it is, in the light of the agreement between the parties and the provisions of the trust instrument, appropriate and proper for the motion to be adopted or defeated.

The motion is granted. The Court hereby appoints Harold Harper, Esq., 70 Pine Street, New York, N. Y., as an impartial umpire, and directs, in accordance with agreement of the parties in open court, that his compensation for serving as such shall be determined by the Court. So ordered.

UNITED SHEEPLINED CLOTHING CO., Inc., Plaintiff,

v.

ARCTIC FUR CAP CORP., Defendant.

United States District Court
S. D. New York.
Sept. 9, 1958.

Proceedings on motion for order striking out amended answer and counterclaim of defendant and entering judgment by default for plaintiff. The District Court, Dawson, J., held that since defendant's failure to appear had been due to neglect of attorney rather than to any unwillingness on part of defendant to appear for deposition, it would be unfair to defendant to dismiss answer and counterclaim and enter default judgment; but held that, as a condition of denial of plaintiff's motion to strike out answer and enter judgment by default, defendant's attorney would be required to pay to plaintiff reasonable expenses incurred in securing appearance of defendant for taking of deposition, including attorney's fees.

Order accordingly.

Federal Civil Procedure ⇐1451

Where defendant's failure to appear was due to neglect of attorney rather than to any unwillingness on part of defendant to appear for deposition, it would be unfair to defendant to dismiss answer and counterclaim and enter default judgment; but, as a condition of denial of plaintiff's motion to strike out answer and enter judgment by default, defendant's attorney would be required to pay to plaintiff reasonable expenses incurred in securing appearance of defendant for taking of deposition, including attorney's fees.

Henry L. Burkitt, New York City, for plaintiff.

Bader & Bader, New York City, for defendant. I. Walton Bader, New York City, of counsel.

DAWSON, District Judge.

This is a motion for an order striking out the amended answer and counterclaim of the defendant and entering judgment by default for plaintiff, and for costs and expenses, including reasonable attorney's fees, for plaintiff. The motion is based on the failure of the defendant to appear on the date set for the taking of its deposition.

It appears that on June 24, 1958, Judge Palmieri entered an order which provided:

> "Plaintiff's application to take defendant's deposition granted. Deposition to be completed in 90 days."

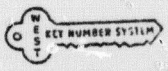
Thereafter, in accordance with this order, notice for the taking of defendant's deposition by the president of the defendant corporation was served by the plaintiff, with notice that the deposition would be taken on July 31, 1958. On the date set for the taking of the deposition the president of the defendant did not appear and his default was duly noted.

On the return of this motion defendant's attorney did not appear. However his client, the president of the defendant company, did appear. He admitted that he had not appeared on the date set for

the taking of his deposition and when asked why he had not appeared he stated that he had not been notified by his attorney that he was required to appear for the taking of the deposition. He stated that he was ready to have his deposition taken at any reasonable time. At the time of the argument of this motion I directed that the attorney for the defendant be directed by telephone to appear in the motion part. He finally appeared. He admitted that he had not notified his client of the time of the taking of the deposition. He stated that he had not appeared at the time set for the taking of the deposition, nor had he appeared on this motion, because of the fact that the defendant had told him it would not be able to pay him any fee, and he felt he did not wish to spend any time for which he would not be compensated.

Under these circumstances it would seem to be unfair to the defendant and improper to dismiss the answer and counterclaim and enter a default judgment against the defendant. Any such failure of the defendant to appear was due to the neglect of defendant's attorney rather than unwillingness on the part of the defendant to appear for the deposition. I directed that the deposition proceed on the following day and I am advised that the deposition has been proceeding since that time. So much of the motion as seeks an order striking out the amended answer and counterclaim of defendant, and entering judgment by default, is therefore denied.

We have here a situation, however, where the inexcusable failure of an attorney to notify his client of the date for the taking of a deposition and the inexcusable failure of the attorney to appear at that time has made it necessary for the plaintiff to bring on this motion, which entailed the preparation of the necessary motion papers and appearance in court on the argument of the motion. The Court therefore orders and directs that, as a condition of the denial of the motion made by the plaintiff to strike out the answer and enter judgment by default, I. Walton Bader, the attorney for the defendant who was guilty of this neglect of his professional duties, shall pay to the plaintiff, as and for the costs and expenses of this motion, the sum of $50, which the Court fixes as the reasonable expenses of plaintiff's attorney incurred in securing the appearance of the defendant for the taking of such deposition, including attorney's fees. So ordered.



UNITED STATES of America, Plaintiff,

v.

Joseph W. R. DALLY, Treasurer of Orange County, State of New York, Defendant.

United States District Court
S. D. New York.
Sept. 8, 1958.

Action by United States against county treasurer to restrain sale of United States property for unpaid taxes. On application for preliminary injunction, the District Court, Dawson, J., held that where lessee of buildings constructed on military installation had no taxable interest and there was no government consent to be taxed, there was no ground for sale of property for unpaid taxes and, in view of fact that proposed sale could interfere with orderly operation at military installation and delay of proposed sale pending determination of principal action would cause no substantial difficulty to treasurer, a preliminary injunction would be granted.

Preliminary injunction granted.

1. Landlord and Tenant ⟹70

In New York state a leasehold interest is personal property.

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N. Y. 10022

SAMUEL I. ROSENMAN
1896-1973

SYDNEY M. KAYE
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TELEX 12-5745

WRITER'S DIRECT DIAL NUMBER

644-6900

February 13, 1975

Hon. Richard Owen
United States Courthouse
Foley Square
New York, New York 10007

Re: Independent Investor Protective L gue et al.
v. Teleprompter Corp. et al. 73 Civil 7133

Dear Judge Owen:

We yesterday received in the mail copies of the affidavit of Mr. Sands dated February 4, 1975 and of the affirmation of Mr. Bader dated February 10, 1975. Neither of these two affidavits sets forth additional facts but they simply contain argumentation. We do not believe that anything in those documents actually warrants a response from us. Most of the statements in them are on their face as untenable as the claim they make that it would have taken Mr. Bader 1/2 hour to walk the 7 1/2 blocks from his office to the East Side Airlines Terminal. We would, however, request leave to make the following few observations:

Plaintiffs assert that if a Court dismisses a complaint pursuant to Rule 37, "it cannot, in addition, impose costs and expenses" (Mr. Bader's affidavit, p. 9). This is not so. Both Rule 37(b) (last paragraph) and Rule 37(d) specifically provide that an order requiring the payment of expenses, including attorneys' fees, may be made "in addition" to orders imposing other sanctions, including the sanction of dismissal. Indeed those Rules state that when another sanction is imposed, the Court "shall require" the payment of expenses, including attorneys' fees, unless the Court finds that the party's fail-

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ure was "substantially justified" or that "other circumstances make an award of expenses unjust." The Advisory Committee Note makes clear that the purpose of these provisions is to ensure "that expenses should ordinarily be awarded unless a court finds that the losing party acted justifiably ...." and that the burden is on the losing party to show that the circumstances are such that expenses should not be awarded. 4A Moore's Federal Practice ¶¶37.01[8], 37.03[2.-7], 37.05. An example of a case in which a default judgment was rendered and expenses were awarded is R. DeBouard & Cie v. S. S. Ionic Coast, 46 F.R.D. 1 (S.D. Tex.) (our Reply Memorandum, p. 41).

As to the sanctions to be applied, "the particular facts must control. The question is one of discretion, and in exercising it ... [the Court is] permitted to take into account the full record of the case before him." Diapulse Corporation of America v. Curtis Publishing Co., 374 F. 2d 442, 447 (2d Cir.). The critical question is whether the party's conduct has been such that he should bear the expenses which that conduct has imposed on his adversary (see cases in our Reply Memorandum, pp. 40-41). In the instant case, not only have plaintiffs failed to file timely answers and to serve full and complete responses as required by the Rules and the Court's order, but their attempts to mislead us and the Court as to the circumstances and their efforts to cover up by untrue statements and false testimony, have imposed a very large burden of cost and expense. If the Court finds that, indeed, such was plaintiffs' conduct and that to expose it required the efforts that we have made, then the Court undoubtedly has the power to, and in justice should, impose the burden of those expenses on plaintiffs. There are few, if any, cases as compelling as this one for ordering such relief.

Unable to defend their misconduct, Messrs. Bader and Sands seek to distract attention therefrom by reference to the telephone log of September 9 (Exh. Q). The absurdity of this maneuver is demonstrated in our Reply Memorandum (pp. 32-35), and Messrs. Sands and Bader have yet to show for what purpose the log was allegedly falsified. Indeed, neither at the hearing nor in his affidavits has Mr. Bader denied making the 10:37 A.M. call on September 9 and at

the hearing he did not question the authenticity of the log but stated that he had no objection to its admission into evidence (Tr. 206).

More could be said about plaintiffs' distortions of the testimony in this regard, about their far-fetched (and often utterly meaningless) statements and non sequiturs; but we believe that silence is what they at this point merit most.

Respectfully yours,

Lawrence R. Eno

LRE/mk

Lawrence R. Eno

cc: I. Walton Bader, Esq.
Bader & Bader, Esqs.
Arthur Kass, Esq.

73 Civ. 4109-LFM
73 Civ. 4133-LFM
73 Civ. 4895-LFM
74 Civ. 3025-LFM
74 Civ. 3281-LFM
74 Civ. 4341-LFM

S.D. OF N.Y.

This is a consolidated action seeking recovery of damages incurred through the allegedly false and misleading statements and omissions made by Teleprompter Corporation, in violation of § 10(b) of the Securities Exchange Act of 1934. Plaintiffs move under Rule 23 (c)(1), Fed.R.Civ.P., for a determination that the suit may be maintained as a class action on behalf of all purchasers of Teleprompter common stock during the period April 1, 1973 through September 7, 1973. The motion is unopposed.

This court finds that plaintiffs satisfy the requirements of Rule 23(a) and (b)(3) and therefore grants their motion for class action status, subject to any further order as the facts may justify. Green v. Wolf Corp., 406 F.2d 291 (2d Cir. 1968); Mersay v. First Republic Corp. of America, 43 F.R.D. 465 (S.D. N.Y. 1968). This court further grants plaintiffs' request that notice to class members be delayed until discovery is completed.

So ordered.

Dated: New York, N. Y.
September 23, 1975

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge

MICROFILM
SEP 25 1975

U.S. FILED COURT
JUN 1 1977
S.D. OF N.Y.

Anon.
Set up a conference bfore Jan. 28
in Lewis v. Teleprompter
73-Civ-3929
1/5/11

73 CIV
3929
VLB

Lawyer Accused

Continued from page 1, column 3

were due and timely served . . . when in fact they had not been."

Judge Owen continued by stating that Mr. Bader had made "false statements and gave false testimony pursuant to an evolving plan to first deceive counsel and later the court as to the circumstances surrounding the mailing of the purported 'answers' to interrogatories."

'Flat' Concession

Mr. Bader, the judge stated, had "flatly conceded" to a Rosenman, Colin attorney and "later to the court" that two of the original answers "had never been received" and given Mr. Bader's story of his activities on Sept. 5, the answer of the third plaintiff "could only have arrived on a subsequent day."

"While it is not germane to a determination of the motion of Touche Ross," Judge Owen concluded, "it is not inappropriate to observe that conduct such as that engaged in by plaintiffs' counsel herein cannot and will not be countenanced by the court.

"I am, therefore, referring this record for further consideration pursuant to Rule 5(f) of the general rules of this court providing for the disciplining of attorneys."

Rule 5(f)

Rule 5(f) provides that complaints alleging that an attorney has been guilty of fraud, deceit or malpractice shall be presented to the chief judge for possible censure, suspension or disbarment of the attorney.

If the chief judge thinks the charges are of sufficient weight, they are referred for preliminary investigation and recommendation to a bar association, which then reports back to the chief judge.

The rule then sets forth the method for proceeding to a hearing before a judge or judges or before a master. After this, the court takes such action as "justice may require."

When informed of the judge's ruling yesterday, Mr. Bader said he will appeal the dismissal and "assume I will have to defend myself" against charges of misconduct.

Counsel for Investors' Group Against TelePrompTer

Federal Judge Moves to Have Lawyer Disciplined for Giving 'False' Testimony

A federal judge this week accused an attorney appearing before him of giving "false testimony" and referred the matter to the chief judge of the district court for possible disciplinary action.

The action came Tuesday from Judge Richard Owen, of the U.S. District Court for the Southern District of New York, in an eighteen-page opinion in *Independent Investor Protective League v. TelePrompTer Corporation*, 73-4153.

Attorney Cited

The action was taken against I. Walton Bader, who is counsel for the league and other plaintiffs in a suit alleging violation of an antifraud provision of a federal securities law in reporting the financial affairs of TelePrompTer. Defendants also include the company's officers and directors and Touche Ross & Company, its then auditor.

The action has been consolidated, along with other similar cases, before another judge but Judge Owen was deciding a motion to impose sanctions against the league, Mr. Bader and others made by the auditor over the service of copies of plaintiffs' answers to interrogatories.

In his decision, the judge dismissed with prejudice the case against the auditor and ordered the league and Mr. Bader to pay it costs and attorney's fees from Sept. 6, 1974, the day after answers to the interrogatories were to have been served.

Facts Stated

On Sept. 5, 1974, the last day to receive the answers, according to Judge Owen, the auditor's attorney, Rosenman, Colin, Kaye, Petschek, Freund & Emil, received unconformed copies of the answers of three plaintiffs. Actually, according to the judge's ruling, none of the answers had been received by Mr. Bader.

"On the entire record," the judge said he could not but help "conclude that Mr. Bader intended the Rosenman firm to believe that the various answers to interrogatories

Continued on page 2, column 6

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Original Filed
1-23-76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, an unincorporated membership association, in behalf of its membership affected, MARTIN F. RANDOLPH, Jr. and MICHAEL FAGAN, individually, said parties suing in their own behalf and in behalf of the Classes involved similarly situated and circumstanced

Plaintiffs

against

Civil Action
73 Civil 4133

TELEPROMPTER CORP., TOUCHE, ROSS & COMPANY, HERBERT SCHLAFLY, WILLIAM BRESNAN, MARVYN CARTON, "JOHN DOE" and "RICHARD ROE", the names "JOHN DOE" and "RICHARD ROE" being ficticious, the parties intended being those persons, firms, corporations and associations involved in the unlawful acts involved herein

Defendants

NOTICE OF APPEAL

SIRS:

PLEASE TAKE NOTICE that INDEPENDENT INVESTOR PROTECTIVE LEAGUE and MARTIN F. RANDOLPH, JR., the plaintiffs herein, and I. WALTON BADER, individually, hereby appeal to the United States Court of Appeals for the Second Circuit from each and every part of a certain final "OPINION and ORDER" made by Hon. RICHARD OWEN, one of the United States District Judges for the Southern District of New York, said final "OPINION and ORDER" being made on January 9th, 1976 and entered in the office of the Clerk of the United States District Court for the Southern District of New York on January 13th 1976, said final "OPINION and ORDER" dismissing the action herein as to the defendant TOUCHE ROSS & COMPANY and awarding actual expenses, including attorneys' fees, against the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE and I.WALTON BADER, individually, said "OPINION and ORDER" being a final determination properly appealable herein.

Dated : January 21st, 1976

Yours, etc.
I. WALTON BADER

I. Walton Bader

I. WALTON BADER
Attorneys for Plaintiffs
40 Morrow Avenue
Scarsdale New York

TO: ROSENMAN, COLIN, KAYE, PETSCHEK, FREUND & EMIL
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SHEA, GOULD CLIMENKO & KRAMER, Esqs.
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SCHLAFLY, etc.
460 Park Avenue
New York, N.Y.

CLERK, UNITED STATES DISTRICT COURT
Southern District of New York
United States Courthouse
Foley Square
New York, N.Y. 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,	73 Civil 4138 (RO)
Plaintiffs,	AFFIDAVIT PURSUANT TO ORDER OF HON. RICHARD OWEN, U.S.D.J. DATED JANUARY 9, 1976
-against-	
TELEPROMPTER CORP., et al.,	
Defendants.	

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman Colin Freund Lewis & Cohen (formerly known as Rosenman Colin Kaye Petschek Freund & Emil), attorneys for defendant Touche Ross & Co. ("Touche Ross"). I make this affidavit in compliance with the following direction of Hon. Richard Owen, United States District Judge, in his order dated January 9, 1976:

> ". . . .I determine that plaintiff Independent Investor Protective League and attorney I. Walton Bader shall pay to the defendant Touche Ross & Co. the actual expenses, including attorneys' fees, incurred by Touche Ross commencing with September 6, 1974, occasioned by this conduct. To that end, the attorneys for Touche Ross are to submit within 30 days in affidavit form a statement of such services rendered for the period commencing September 6, 1974, to which plaintiff IIPL and I. Walton Bader may respond, so that I may reach an appropriate conclusion on this issue."

2. In the period from September 6, 1974 to and in-

cluding February 13, 1975, attorneys of my firm spent a total of approximately 290 hours (of which approximately 170 hours were spent by me, about 75 hours by one associate James K. Nevling Jr., Esq., and about 45 hours by another associate Marvin Pickholz, Esq.) in connection with plaintiffs' purported answers to interrogatories, and the various circumstances and proceedings relating thereto, which are dealt with in Judge Owen's order and decision of January 9, 1976.

3. The services performed in the aforesaid period in connection with such matters included the following: analysis of plaintiffs' purported answers to interrogatories; investigations with respect thereto; the making of a Rule 37 motion to dismiss the complaint and for other sanctions on the basis of such purported answers, including research into the law, preparation of moving, supplemental and further affidavits and a memorandum of law; study of plaintiffs' motion for additional time to serve proper interrogatory answers, including research into the law, preparation of an answering affidavit and memorandum of law; presentation of oral argument on both said motions before the Court; preparation of papers for a stay of plaintiffs' discovery pending resolution of the Rule 37 motion; examining into purported voluntary dismissals by certain of the plaintiffs and responding thereto; preparation for hearings directed by Judge Owen in connection with the aforesaid purported answers, including the subpoenaing of postal records; presentation of testimony and documentary evidence at hearings before Judge Owen on

November 4, 13, and 14, 1974; review of the 225-page transcript of such testimony and the 21 exhibits marked on the hearings; continued research into law and preparation of a 63-page post-hearing memorandum analyzing the testimony and pertinent authorities; reviewing and analyzing additional papers submitted by plaintiffs after hearing including a 56-page memorandum of purported fact and law; researching and preparing a 43-page reply memorandum of fact and law and additional papers; correspondence with plaintiffs' counsel and the Court.

4. The aforesaid 290 hours of time would, at our normal billing rates, have amounted to approximately $29,000. We did not, however, bill our client for these services at our normal rates but at a much reduced rate. Our actual billing, and payment received, for these services amounted to approximately $17,500.

5. While our firm incurred disbursements, reimbursed by the client, for such matters as duplicating, fares, overtime, etc., in connection with the matters dealt with in the opinion and order of Judge Owen, in order to avoid controversy with respect thereto we submit for the Court's consideration only the following disbursements which were reimbursed by the client:

Cost of transcript of hearing before Judge Owen on November 4, 13 and 14, 1974	$ 549.38
Witness fees and mileage in connection with subpoena served on U. S. Postal Service	25.00
	$ 574.38

6. It is accordingly suggested that the Court's determination be based upon the foregoing fees of $17,500 and disbursements of $574.38.

Lawrence R. Eno
LAWRENCE R. ENO

Sworn to before me this
5th day of February, 1976.

Marlene Herman
Notary Public

MARLENE HERMAN
NOTARY PUBLIC, State of New York
No. 41-6367365
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 19 76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs

Civil Action
73 Civil 4138

against

TELEPROMPTER CORP. et. al.

Defendants

AFFIRMATION IN OPPOSITION TO AFFIDAVIT IN SUPPORT OF FEE APPLICATION FOR $17,500 IN FEES AND $57[illegible].38 IN DISBURSEMENTS

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I, WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document has the force of an affidavit under the laws of the State of New York.

I have read the affidavit of LAWRENCE R. ENO and take issue with the amount of fees and disbursements claimed. I think that a request for fees of $17,500 for a Rule 37 motion sets some sort of record.

There is no itemization of the hours spent, the services performed, and whether these hours were reasonable in amount and were authorized by the client. Hence, under normal rules of law an evidentiary hearing with respect to the fees expended is required. PLAINTIFF INDEPENDENT INVESTOR PROTECTIVE LEAGUE HEREBY DEMANDS SUCH EVIDENTIARY HEARING BE HELD AT THE CONVENIENCE OF THE COURT.

Furthermore the cost of a copy of the transcript of the hearings before Judge Owen is not a proper item of expense. Only

a single Court copy of the transcript is a proper item of expense and, since the plaintiff also ordered a copy the cost of the Court' copy of the transcript must be split between the parties. The witness fee disbursement of $25.00 is a proper expense and the plaintiff does not question it.

Finally the Court is informed that a Notice of Appeal has been filed from the determination of the Court. This Notice of Appeal has been filed pursuant to the doctrine of Cohen vs. Beneficial Finance Co. Once a Notice of Appeal is filed and the appeal docketed in the Court of Appeals the District Court loses all jurisdiction in the case and therefore, it is submitted, the determination of the amount of attorneys' fees to be paid in connection with this matter should await the determination by the Court of Appeals of the present appeal.

Dated : February 6th, 1976

I.Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,	:	
	:	73 Civil 4133 (RO)
Plaintiffs,	:	REPLY AFFIDAVIT ON BEHALF OF TOUCHE ROSS & CO.
-against-	:	
TELEPROMPTER CORP., et al.,	:	
Defendants.	:	

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

This affidavit is respectfully submitted in reply to the affirmation of I. Walton Bader, Esq. dated February 6, 1976.

None of the points raised by Mr. Bader has merit, as the following shows:

1

Mr. Bader asks for an evidentiary hearing on the ground that in my affidavit of February 5, 1976 there is "no itemization of the hours spent, the services performed, and whether the hours were reasonable in amount and were authorized by the client." Mr. Bader is wrong.

My affidavit shows the hours spent and the services performed. Assuming that Mr. Bader is in a position to raise an issue as to "whether the hours were reasonable"

(which we do not concede), the Court, because of its involvement in every stage of the services rendered, is in a position to make that determination without a further hearing. Finally, not only were the services authorized by the client, but my affidavit states that they were paid for by the client.

2

Mr. Bader states that the cost of a transcript of the hearings before Judge Owen "is not a proper item of expense." Mr. Bader is wrong. In ordering that Independent Investor Protective League and Mr. Bader pay Touche Ross' "actual expenses," the Court was not limiting Touche Ross to taxable costs. In any event, the cost of a transcript for counsel is a proper item of taxable costs under 28 U.S.C.A. § 1920(2). Whether such taxable costs shall be awarded is within the discretion of the Court. Moore-McCormack Lines, Inc. v. Richardson, 295 F. 2d 583, 597-8 (2d Cir. 1961), cert. den. 368 U.S. 989 and 370 U.S. 937 (1962); Syracuse Broadcasting Corporation v. Newhouse, 319 U.S. 683, 690 (2d Cir. 1963). In this case, it was clearly necessary for counsel to have the transcript in order to prepare the post-hearings memoranda which discussed and analyzed the testimony given on the hearings.

3

Mr. Bader states that the Court has lost jurisdiction to make the assessment specifically provided for in the

order of January 9, 1976 because Mr. Bader on January 23, 1976 filed a notice of appeal from said order. There is no doctrine that the filing of a notice of appeal deprives a Court of power to implement its order pursuant to its terms.

What Mr. Bader has done is simply to raise a question whether his January 23, 1976 notice of appeal is proper. In a letter dated January 29, 1976 to the Court of Appeals, Mr. Bader said that, because inter alia this Court had not yet fixed the amount payable pursuant to the order, he did not know whether the order of January 9, 1976 was presently appealable. That is a problem for Mr. Bader and perhaps the Court of Appeals. But that is not a problem for this Court; and the fact that Mr. Bader determined to file a notice of appeal on January 23, 1976 in no way deprived this Court of jurisdiction to proceed under its order.

Lawrence R. Eno
LAWRENCE R. ENO

Sworn to before me this
9th day of February, 1976.

Marlene Herman
Notary Public

MARLENE HERMAN
NOTARY PUBLIC, State of New York
No. 41-6267365
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 19 76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiff

against

73 Civil 4133
LFM (RO)

TELEPROMPTER CORP. et. al.

Defendants

REPLYING AFFIRMATION TO AFFIDAVIT
OF LAWRENCE R. ENO WITH RESPECT TO
HEARING IN CONNECTION WITH ATTORNEYS'
FEES TO BE AWARDED AGAINST PLAINTIFFS

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document has the force of an affidavit under the Laws of the State of New York.

Since the filing of the opposing affidavit by the undersigned in this matter new evidence has arisen which the undersigned believes should be considered by the District Judge. This new evidence is annexed to this affirmation and consists of an affidavit by the postman who delivered the last mail delivery to my former office at 274 Madison Avenue, New York,N.Y.

This affidavit clearly shows that there is a good and sufficent explanation for the testimony of SANDS that he received the original RANDOLPH interrogatory answers on September 5th,1976. Since the mail was delivered to a secretary in my former office who was employed by Mr. Scher (who is the "false" DOROTHY BLACKER as testified to by Mr. Nevling at the hearings) and, furthermore, since

this secretary had eye trouble,as indicated by the LA PORTA affidavit, the time discrepancy is now explained.

Prior to the making of this affirmation, I checked the office of Mr. Alexander Scher to determine if the secretary involved was still in his employ. I received word from his present secretary that she left his employ during the latter part of 1974.

If we now assume, ARGUENDO, that BADER left his office at 3PM on September 5th,1974 and if we note, as we must based on the evidence, that the latest mail delivery on September 5th,1974 occurred no later than 2PM on that day, it is still possible for SANDS to have seen the RANDOLPH envelope at the time that he claimed to have seen it. This fact occurs due to the possibility that the said secretary (who was office receptionist) received the RANDOLPH interrogatories either at the 2PM delivery or at an earlier delivery on that day. She then could have kept these papers on her desk and later placed them on the table where SANDS found them.(See hearing record page 74).

I further wish to inform the Court that on December 31st 1974 DOROTHY BLACKER left my employ and that she was notified of her impending termination at the time that she testified before Your Honor. I am requesting confirmation from the New York State Unemployment Insurance Department as per letter annexed hereto. Based on this fact I believe that the Court should consider DOROTHY BLACKER a "hostile witness" and her testimony should be reconsidered on that ground.

I further annex to this affirmation a copy of a Notice of Motion filed in the Court of Appeals to remand the matter back to Your Honor for consideration of the newly presented evidence and for any other hearings that the Court may wish to hold. The grant by the Court of Appeals of the Motion to Remand will avoid the jurisdictional question with respect to the pending Notice of Appeal, as contrasted with Your Honor's continuing jurisdiction over this matter until a judgment is entered herein.

After the Court considers the newly presented evidence, the Court may (1) vacate its prior Order and make such new order as is warranted under the circumstances (2) affirm its prior order in all respects, (3) modify its prior order. After this is done the Court, if it affirms or modifies its prior order, can consider the question of attorneys' fees.

Assuming, arguendo, that the question of attorneys' fees will be considered, the cases are clear that an award of attorneys' fees does not give the adverse party a "blank check" to obtain fees in the amount billed. The Court must determine whether (1) the amount sought is reasonable for the services rendered, (2) the amount sought was material and necessary in connection with the action, (3) the time spent was reasonable and proper. The only way that these matters can be determined is by evidentiary hearing where, after the defendants' attorneys testify, the plaintiffs can place their expert on the stand to controvert the amount claimed.

There are other questions that are also involved in the question of attorneys' fees. The hours set forth in the affidavit of the attorney for the defendant TOUCHE ROSS speaks of "investigation time". However it is conceded that the original affidavit submitted by ENO as to the number of envelopes received by his firm is not correct. Also the testimony of ENO that he did not know, at the end of the hearings, the interrogatory answers that came in the envelope presented to the Court is also obviously incorrect. Thus the time spent in investigations is, at least, questionable since an incorrect result was obtained and this question must also be explored by evidentiary hearing.

WHEREFORE the plaintiffs pray that this Court hold an evidentiary hearing to consider the newly presented evidence herein and, if the Court then determines that its prior determination be adhered to, that it then hold an evidentiary hearing with respect to the amount of the attorneys' fees to be assessed against the

plaintiffs under Rule 37 FRCP.

Dated : February 13th,1976

I.Walton Bader

AFFIRMATION OF SERVICE

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York, hereby states under penalties of perjury that on February 13th, 1976 he served a copy of the foregoing affirmation upon all attorneys for the defendants herein, by mail.

Dated : February 13th,1976

I.Walton Bader

I.WALTON BADER
40 Morrow Avenue
Scarsdale New York

February 13th,1976

State of New York
Unemployment Insurance Benefits Section
2 World Trade Center
New York,N.Y.

Gentlemen,

Please confirm for me the date of termination of the employment of DOROTHY BLACKER with the firm of BADER and BADER (my records show December 31st,1974) and please tell me if she is now employed elsewhere.

IWB/iwb

Respectfully,

I. Walton Bader

I.Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs

Civil Action
73 Civil 4133

against

TELEPROMPTER CORP. et. al.

Defendants

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

VINCENT J. LA PORTA, being duly sworn, deposes and says:

I am a Letter Carrier of the United States Postal Service.

I made the last delivery of mail to suite 1801 at 274 Madison Avenue, New York,N.Y. on September 5th,1974.

I reside at 1612 Zerega Avenue, Bronx N.Y. 10462.

At the time of this delivery I gave all of the mail for Suite 1801 at 274 Madison Avenue, New York,N.Y. (which included mail for I.WALTON BADER, BADER and BADER, RICHARDS & GEIER and V. ALEXANDER SCHER)to the Secretary of Mr. V.ALEXANDER SCHER who sat at the front desk at 274 Madison Avenue, Room 1801. This secretary, I recall, had eye trouble and would peer at the addresses on the envelopes to decipher them.

It was my normal practice, in delivering all mail to suite 1801 at 274 Madison Avenue to deliver this mail to the said secretary who was the office receptionist.

Vincent J. La Porta
VINCENT J. LA PORTA

Sworn to before me
this 10th day of February 1976

Jerome Kaplan

JEROME KAPLAN
Notary Public, State of New York
No. 41-7055070
Qualified in Queens County
Certificate Filed in N.Y. Co. Clerk's Office
Commission Expires March 30, 1977

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs-Appellants

against

TELEPROMPTER CORP., et. al.

Defendants-Appellees

Docket No.
76-7027

SUBSTANTIVE MOTION

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affirmation of I. WALTON BADER, dated February 13th,1976, the undersigned will move this Court, at a Stated Term thereof, to be held at the Courthouse, 17th Floor, United States Courthouse, Foley Square, New York,N.Y. 10007, on March 16 1976 at 10:00 o'clock in the forenoon, or as soon thereafter as Counsel can be heard for an Order, pursuant to Rule 27 of the Federal Rules of Appellate Proceedure and Rule 27 of the Rules of this Court, to remand this appeal to the United States District Court for the Southern District of New York in order to consider the new evidence presented herewith.

Dated : February 13th,1976

Yours, etc.

BADER and BADER
Attorney for Plaintiffs-Appellants
40 Morrow Avenue
Scarsdale NY

TO: Appellee's attorneys.

Commission Expires March 30, 1977

-1-

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

INDEPENDENT INVESTOR PROTECTIVE LEAGUE,etc.

Plaintiffs-Appellants

against

Docket No.
76-7027

TELEPROMPTER CORP. et. al.

Defendants-Appellees

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document consists of the equivalent of an affidavit under the laws of the State of New York.

I am one of the attorneys for the plaintiffs-appellants herein and am fully familiar with the facts and circumstances of this action.

The District Judge, in a lengthy opinion, decided that Rule 37 sanctions should be imposed upon the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE and upon its attorney, the undersigned, because, it was claimed, the plaintiffs attorney entered into a course of conduct"pursuant to an evolving plan to first deceive counsel and later the court as to the circumstances surrounding the purported mailing of answers to interrogatories".

The District Judge awarded counsel fees against the plaintiffs and their attorneys the amount of which was to be fixed later.

The rationale of the District Judge's opinion basically derived from the fact that the mail in which the original answers were claimed to have arrived had been delivered prior to the time that the court found that the plaintiff's attorney had left his office. In addition the Court found that the testimony of the secretary of the plaintiff's attorney indicated that another set of interrogatory answers could not have been executed on the date claimed.

Subsequent to this determination plaintiffs, and their attorney, promptly appealed to this Court under the rationale of Cohen vs. Beneficial Finance Co., since the undersigned believed that the matter was too important to await the final result of this action which might be years away.

Thereafter, a review of the record indicated that there must be a logical explanation from someone for the alleged time discrepancy. Accordingly the undersigned was successful in interviewing the mailman who actually delivered the mail on the day in question. MR. LA PORTA is mentioned on pages 89-94 of the evidentiary record in this case. Mr. La Porta's affidavit is annexed to this motion. Mr. LaPorta's affidavit fully explains the time discrepancy indicated by the District Judge and, accordingly, this constitutes important evidence that the District Judge should consider in connection with this motion.

Where newly presented evidence to be considered by the District Court is discovered after the matter is on appeal the Court of Appeals must remand the appeal to the District Court for such consideration. Otherwise the District Court would have no jurisdiction since jurisdiction passes to the Court of Appeals upon the filing of a Notice of Appeal.

In addition the District Court, since the matter is to be remanded to it, should also consider the testimony of the

former secretary of the undersigned,DOROTHY BLACKER, in view of the fact that her employment was terminated shorlty after her testimony was given and this was known to her at the time of the giving of her testimony.

WHEREFORE the undersigned prays that the motion to remand this appeal to the District Court be in all respects granted.

Dated : February 13th,1976

I.Walton Bader

* * * *

[A copy of the affidavit of Vincent J. LaPorta was attached to the preceding motion papers in the Court of Appeals. It is not reproduced here, but another copy of the same affidavit appears at page 671 above].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al., Plaintiffs,	73 Civil 4133 (RO)
-against-	REBUTTAL AFFIDAVIT ON BEHALF OF TOUCHE ROSS & CO.
TELEPROMPTER CORP., et al. Defendants.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I make this affidavit in response to the affirmation of I. Walton Bader, Esq. dated February 13, 1976 and to the memorandum of law submitted with that affirmation.

Mr. Bader asks this Court to consider certain alleged "newly discovered evidence". He also annexes to his affirmation a copy of a motion made by him in the Court of Appeals for the Second Circuit to remand the case to this Court for consideration of such "newly discovered evidence". Annexed to the instant affidavit is a copy of our answering affidavit on that motion.

The so-called "newly discovered evidence" consists of (1) an affidavit dated February 10, 1976 of Vincent J. La Porta, the postman who made the last delivery of mail to Mr. Bader's office on September 5, 1974, in which Mr. La Porta merely says that when he delivered that mail he left it, as he normally

did, with the person acting as office receptionist who had "eye trouble", and (2) a request by Mr. Bader that the Court consider his secretary, Ms. Blacker, a "hostile witness" because he had told her before she testified that she was being fired.

We have discussed this purported "newly discovered evidence" in our annexed affidavit on the motion in the Court of Appeals. In order to conserve the time of the Court, we respectfully refer the Court to that discussion. It is there demonstrated that the so-called "newly discovered evidence" is neither relevant nor material nor "newly discovered". It is a transparent irrelevancy, having no relationship to any issue in this proceeding, and is but a further attempt to mislead by essentially meaningless documents and senseless argumentation. The purpose of its submission is plainly to delay the proceeding.

The suggestion that this Court reconsider its decision in this proceeding on the basis of this "newly discovered evidence" should accordingly be rejected.

In the annexed affidavit, we also discuss the appropriate procedure with respect to the motion to remand. We there point out that this Court, without any remand of the case, may consider this "newly discovered evidence" and may reject it. Should it do so, no remand of the case will be in order and the motion in the Court of Appeals, presently returnable March 16, 1976, should be denied.

Mr. Bader's affirmation, and the memorandum of law, further again ask for an evidentiary hearing with respect

to the reasonableness of the attorneys' fees.* There are, of course, situations in which such a hearing is required; for example, when a Court otherwise lacks knowledge of the services rendered or counsel who have been successful in creating a fund seek a fee for their efforts. Such a case was City of Detroit v. Grinnell Corporation, 495 F.2d 448, 468 et seq. (2d Cir. 1974), whose discussion we commend to the Court.

This, however, is not such a case. We are dealing here with a fee already fixed through payment by the client with respect to services with which the Court is fully familiar. We are not here dealing with the question of just compensation to an attorney but with the question of "reasonable expenses" of the client under Rule 37. The Court has full knowledge of all the facts necessary to make such determination. Determinations in such cases are traditionally made on affidavits, as cases cited by Mr. Bader show: see, e.g., Cromaglass Corporation v. Ferm, 344 F. Supp. 924 (M.D. Pa. 1972), app. dis. 500 F.2d 601 (3d Cir. 1974); see also, Shapiro v. Freeman, 38 F.R.D. 308 (S.D.N.Y. 1965); Ranger Insurance Co. v. Algie, 482 F.2d 861 (5th Cir. 1973).

Mr. Bader indicates that he may wish to introduce the testimony of an "expert" as to the value of the services. However, as the City of Detroit case, supra at 472, quotes,

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*If such a hearing were held, it is clear that Touche Ross' expenses incident thereto, including attorneys' fees, would have to be borne by IIPL and Mr. Bader under the Court's order of January 9, 1976, since they too would be expenses "occasioned by . . . (the) conduct" referred to in that order.

even in a case of awarding attorneys' fees, "expert opinion evidence is not required" because of the "judge's expertise". However, if Mr. Bader wishes to introduce the affidavit of an "expert", he is, of course, free to do so.

Thus, no issue has been created requiring the holding of an evidentiary hearing. The services rendered are a matter of record: the Court has before it the papers submitted, the letters exchanged, the affidavits drawn, the memoranda of law compiled, the transcript of the hearings held, the briefs, affidavits and letters thereafter submitted; and the Court knows of the results obtained and has been informed of the hours spent, by whom they were spent, the normal time charges for such hours, and the fee actually paid by the client. Nothing has been submitted contravening any of this or creating any issue requiring a hearing; nor has any further information been requested.

The only question that Mr. Bader has raised is to state that time for "investigation" should not be allowed because "an incorrect result" was obtained. This is strange indeed. As a result of such "investigation", the misconduct of Mr. Bader, Mr. Sands and IIPL was exposed, the action was dismissed as to Touche Ross with prejudice and sanctions were imposed. It is clear that the "investigation" time was well spent.

It is accordingly prayed that the Court:

(1) Deny the request for reconsideration of its ruling on the basis of the purported "newly discovered evidence"; and

(2) Fix the reasonable expenses, including attorneys' fees, on the basis of the record before it and the affidavits submitted.

Lawrence R. Eno
LAWRENCE R. ENO

Sworn to before me this
23rd day of February, 1976.

Marlene Herman
Notary Public

MARLENE HERMAN
NOTARY PUBLIC, State of New York
No. 41-6987365
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1976

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- -

INDEPENDENT INVESTOR PROTECTIVE LEAGUE,
et al.,

Plaintiffs-Appellants

against

TELEPROMPTER CORP., et al.

Defendants-Appellees

Docket No.
76-7027

ANSWERING
AFFIDAVIT

- -

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Freund Lewis & Cohen, attorneys for defendant-appellee Touche Ross & Co. ("Touche Ross"). I submit this affidavit in opposition to the motion of plaintiffs-appellants to remand this appeal ostensibly so that the United States District Court for the Southern District of New York (Owen, J.) may consider "newly discovered evidence".

This is an appeal from a decision and order dated January 9, 1976 of Hon. Richard Owen, U.S.D.J. A copy of the decision and order is annexed hereto.

We assume for the purposes of this motion that said order, which in part dismissed this action against Touche Ross with prejudice, is appealable even though the order provided for the imposition of monetary sanctions, the amount of which has not yet been determined.

As we show, since the so-called "newly discovered evidence" is manifestly neither relevant nor material nor "newly discovered", this motion should on that ground alone be denied. Even were the Court disposed to leave that for consideration by the District Court, no remand of this appeal is presently required. The appropriate procedure would be for the plaintiffs-appellants to present the matter to the District Court, and if the District Court indicates that it is inclined to grant relief, then application can be made for a remand. If the District Court denies relief, no remand will be necessary. See 11 Wright & Miller, Federal Practice and Procedure (1973): Civil § 2873; Ryan v. United States Lines Company, 303 F.2d 430, 433-4 (2d Cir. 1962).

Indeed, the so-called "newly discovered evidence" has already been presented to the District Court by plaintiffs' attorney in the form of an affirmation dated February 13, 1976; and the matter is accordingly now before that Court.

As succinctly set forth in 7 Moore's Federal Practice (2d ed.) ¶60.23[4],* in order for relief to be granted with respect to the purported "newly discovered evidence"

> ". . . the failure to produce the evidence at the trial must not have been caused by the moving party's lack of due diligence. The evidence must be such as was not and could not by the exercise of diligence have been discovered in time to present in the original proceeding. It must be admissible and credible, and must be of such a material and controlling nature as will probably change the outcome, not merely cumulative or tending to impeach or contradict a witness."

*Also, 6A Moore's Federal Practice (2d ed.) ¶59.08[3].

The order appealed from found, among other things, that plaintiffs' attorney, I. Walton Bader, Esq., had mailed purported copies of certain answers to interrogatories on September 5, 1974, the last day permitted by Court order for their service, and had by this and other means attempted to deceive Touche Ross' attorneys into believing that he had the originals of such answers when he did not have them; and that Mr. Bader and an officer of one of the plaintiffs thereafter "made false statements and gave false testimony pursuant to an evolving plan first to deceive counsel and later the Court as to the circumstances surrounding the mailing of the purported 'answers' to interrogatories . . .".

The so-called "newly discovered evidence" consists of an affidavit dated February 10, 1976 of an employee of the United States Postal Service, Vincent J. La Porta, stating that he made the last delivery of mail on September 5, 1974 to Mr. Bader's office, and that he left the mail, according to his normal practice, with the secretary to one of the men in the office who was the office receptionist.

There is no issue to which that affidavit is relevant. There was an issue as to <u>the time when</u> the last delivery of mail was made to Mr. Bader's office on September 5, 1974. Mr. Bader claimed that the delivery of mail to his office took place at about 3:30 P.M. and that on September 5, 1974 he had left his office prior to that time. The records of the United States Postal Service showed, however, that the last delivery of mail to Mr. Bader's office that day took place between 1:30 P.M. and 1:45 P.M.

Mr. La Porta's affidavit does not challenge that fact; it makes no reference to the time when the last mail delivery was made on September 5, 1974. All it says is that when Mr. La Porta made the last delivery on September 5, 1974, he left it, as he normally did, with the person who was the office receptionist.

The affidavit thus in no way relates to what the moving affidavit calls "the time discrepancy indicated by the District Judge." The affidavit of Mr. La Porta is presented as though it solved some great mystery, which it does not. It is essentially a meaningless piece of paper interposed for purposes of delay. Indeed, as the annexed opinion shows, the moving affidavit is even wrong in suggesting that the time of that last mail delivery was the important fact leading to the Court's conclusion: there was a whole chain of facts and circumstances which led to that result.

Further, Mr. La Porta was known at the hearings in this matter in November 1974 to have been the person who made the last delivery of mail to Mr. Bader's office on September 5, 1974. An employee of the Postal Service so testified, and documents bearing Mr. La Porta's name and social security number were marked as exhibits. Mr. La Porta was available to Mr. Bader during the hearings* and at all times since the hearings in November 1974. Mr. Bader submitted other evidentiary papers to the Court weeks after the formal hearings

*Mr. La Porta was identified at a hearing on November 4, 1974. Further hearings were held on November 13 and 14, 1974.

closed, and yet he apparently did not attempt to interview Mr. La Porta until February 1976 -- about 1-1/4 years after the formal hearings closed and about 1 year after final papers were filed. It is clear that Mr. La Porta's affidavit does not constitute "newly discovered evidence", for evidence that at all times lies ready at hand is not "newly discovered". United States v. Bransen, 142 F.2d 232, 235 (9th Cir. 1944); Grant County Deposit Bank v. Greene, 200 F.2d 835, 841 (6th Cir. 1952); Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 421.

Finally, the moving affidavit suggests that if the case is remanded, the District Judge should reconsider the testimony of Mr. Bader's secretary at the hearing because at the time that she testified Mr. Bader had allegedly told her that she was being fired. We fail to see the relevance of that purported fact, but in any event it cannot avail Mr. Bader. He was present at the hearing, he had an opportunity to question his secretary, and he also personally testified. If Mr. Bader thought it important to let us and the Court know that he had fired his secretary, he should have made it known to the Court at the time or in the succeeding weeks before the final papers were submitted.

The obvious purpose of the submission of plaintiffs' belated and transparently irrelevant material is simply to seek delay. The plaintiffs-appellants are under orders of this Court to file their brief on appeal by March 26, 1976 and are quite clearly seeking to avoid that date. This motion was made returnable March 16, 1976, two weeks after it could have been made returnable under the Rules.

By this means, plaintiffs-appellants are seeking to give the pendency of this motion as an excuse for not meeting the dates governing this appeal as fixed by the Court.

Since it is obvious that there is no merit to the claim of "newly discovered evidence", the motion should be denied. Even if the Court were inclined to leave consideration of the matter to the District Court, the motion should not be granted but held in abeyance pending the action of the District Court.

Lawrence R. Eno
LAWRENCE R. ENO

Sworn to before me this
23rd day of February, 1976.

Marlene Herman
Notary Public

MARLENE HERMAN
NOTARY PUBLIC, State of New York
No. 41-6867365
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 19 76

* * * *

A copy of Judge Owen's Opinion and Order dated January 9, 1976 was attached to the preceding Answering Affidavit in the Court of Appeals. It is not reproduced here, but another copy of the opinion and order appears at pp. **A25-A42 above.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et.al.

Plaintiffs

against

TELEPROMPTER CORP. ,et. al.

Defendants

73 Civil 3929 LFM
73 Civil 4109 LFM
73 Civil 4133 LFM
73 Civil 4895 LFM
73 Civil 3025 LFM
74 Civil 3281 LFM
74 Civil 4341 LFM

Consolidated for all purposes

MOTION

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affirmation of I.WALTON BADER, dated April 22nd,1976 and the annexed affidavit of MICHAEL FAGAN, dated March 22nd,1976 and the annexed affidavit of VINCENT J. LaPORTA, dated February 10th,1976 the undersigned will move this Court, before the Hon, Lloyd F. MacMahon, United States District Judge, on Friday May 7th,1976 at 2:15 o'clock in the afternoon, for an Order granting the following relief to the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE and to MICHAEL FAGAN, MARTIN RANDOLPH, SADIE MOSNER,ROSE L. GROSS,G. DIXON MAHON, ROBERT W. STODDARD,JOHN C. BERNIUS,

1. Vacating in part the injunctive provsions contained in the Order of this Court on November 15th,1974 reading as follows:

> "7. All present and former stockholders of Teleprompter Corporation (other than plaintiffs in the constituent actions) shall be and are hereby stayed from commencing or continuing any derivative or representative actions, * * with respect to Teleprompter Corp., against Teleprompter Corp. and the other defendants named in constituent actions and from proceeding with any such actions, suits or proceedings commenced on or after the date of entry of this order, based upon any of the transactions complained of in the constitutent actions* * *"

to the extent of permitting the organization and the individuals named hereinabove to commence Class Litigation in the Supreme

Court of the State of New York as follows:

A. In behalf of all purchasers of TELEPROMPTER CORP. stock from October 1971 to September 7th, 1973 against the defendant TOUCHE ROSS & COMPANY, based upon common-law theories of negligence in failing to properly audit the various financial reports issued by said TELEPROMPTER CORP. (as suggested by Judge Brieant in Rich vs. Touche Ross (Docket 74-722).

B. In behalf of all purchasers of the stock of TELEPROMPTER CORP. prior to April 1, 1973 and who held such stock without selling the same during the period April 1, 1973 to September 7th, 1973, pursuant to New York State Common Law and the New York State Securities Acts.

2. Excising, from the caption of the above consolidated action, the action 73 Civil 4133 and determining that, with respect to such action, the said action is terminated for all purposes in this Court by reason of the filing on October 31, 1974 of a Stipulation of Voluntary Dismissal of this action which was "so ordered" by this Court on January 23rd, 1976.

3. In the event that this Court does not grant the relief set forth in "2" hereinabove then, pursuant to the applicable provisions of the Federal Rules (Rule 60(b) et seq.) granting reconsideration of the Order and Opinion of this Court dated January 9, 1976 based upon the newly discovered evidence set forth in the annexed affidavits.

4. Granting such other, further and different relief as this Court may deem just and proper.

Dated : April 22nd, 1976

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
in Civil 73-4133
65 Court Street
White Plains N.Y.

TO: Defendants' Attorneys

Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK - - -

HARRY LEWIS, et. al.

Plaintiffs

against

TELEPROMPTER CORP. et. al.

- - - - - - Defendants

AFFIRMATION OF I.WALTON BADER

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document has the force of an affidavit under the laws of the State of New York.

I am one of the attorneys for the Moving parties and am fully familiar with the facts and circumstances of this action.

This is a motion for multiple relief as set forth in the Notice of Motion.

At the outset the Moving parties seek partial vacation of the injunction issued by this Court against any Class or deriviative litigation against the defendants in this suit by any of the parties to this action.

The Supreme Court of the United States has now decided Hochfelder vs. Ernst & Ernst ---US---, which, in effect, precludes Securities Act liability upon accountants unless the accountants are guilty of participating in a fraud rather than merely being guilty of negligence. In the case at Bar, in my opinion based on the evidence within my knowledge, I do not believe that the defendant TOUCHE ROSS & COMPANY, actually participated in a fraud.

Thus Federal Jurisidction of the negligence claim is absent (viz. Hochfelder) and such a claim is a State Claim and not a Federal one. Judge Brieant in the cited case of Rich vs. Touche Ross has so held.

Therefore it would be prejudicial not to permit the institution of State litigation against Touche Ross with respect to the negligence claim and the undersigned respectfully requests permission to so do.

Furthermore in the case of Blue Chip vs. Manor Drug Stores a Federal Court does not have Section 10(b) jurisidiction of a claim of loss of a stockholder where he was not either a purchaser or a seller during the Class period. However the New York State Securities Act permit a person who held stock during such a period to recover his damages. Thus the Court is also being asked to permit litigation of that type to be instituted against all defendants on that ground.

On January 9th,1976 Judge Owen, of this Court granted Rule 37 sanctions against the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE and its attorney I.WALTON BADER, by reason of claimed false testimony given with respect to certain interrogatory answers which were served in this case. The sanctions included dismissal of the action with respect to the INDEPENDENT INVESTOR PROTECTIVE LEAGUE and payment of attorneys fees and expenses to the defendant TOUCHE ROSS & COMPANY. On January 23rd,1976 this Court signed an Order of voluntary dismissal of this action which was filed in the District Court on October 31st,1974.

As a result of this action, in the plaintiffs' opinion jurisdiction of the District Court terminated with respect to this action and no further proceedings are warranted in such District Court. This motion thus seeks such relief.

The Court, however, may hold that since attorneys' fees and expenses have not yet been fixed by the District Court, the District Court still has jurisdiction in the case. In such event this motion seeks re-consideration of the prior determination by reason of thenewly discovered evidence set forth in the affidavits of FAGAN andLaPORTA submitted herewith.

In the event that the Court reaches this question the undersigned will submit reasons as to why the newly discovered evidence was not sooner presented.

At the time of the hearings held by the District Court the only question involved was the receipt by the undersigned of signed interrogatory answers of the plaintiff RANDOLPH. Since a Notice of Voluntary Dismissal had been filed prior to the hearings with respect to the plaintiff RANDOLPH the problem with respect to the mail delivery did not appear important. Also, it was not until the hearings actually commenced that the question of the time of the mail delivery became important. Thus, until the opinion of the District Court was issued, it did not seem to the undersigned that it was necessary to investigate the mail delivery problem.

With respect to the plaintiff FAGAN the undersigned had consistently believed that, since signed answers of this plaintiff had not been returned, and that since a letter calling attention to this fact was ignored, that FAGAN was just not interested in this action any more. Only after the attorney for TOUCHE ROSS (in connection with possible settlement discussions of this matter had demanded a dismissal with prejudice against the plaintiff FAGAN) did the undersigned communicate with FAGAN and determine that he has complied with the Order of the Court all along.

The newly presented evidence clearly, in the opinion of the undersigned, destroys the basis for the determination of the District Court in granting Rule 37 relief to the defendant TOUCHE ROSS. Therefore, in the event that this Court finds that it still has jurisdiction in this matter, reconsideration of its prior determination is requested.

A short memorandum of law is annexed to this motion. The plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE will also rely on the Appellant's Brief submitted to the Court of Appeals for the Second Circuit which is annexed to this motion.

WHEREFORE the undersigned prays that this Motion be in all respects granted.

Dated : April 22nd, 1976

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs

Civil Action
73 Civil 4133
LFM

against

TELEPROMPTER CORP. et. al.

Defendants

AFFIDAVIT OF MICHAEL FAGAN

STATE OF ~~CONNECTICUT~~ NEW YORK
COUNTY OF ~~FAIRFIELD~~ PUTNAM ss:

MICHAEL FAGAN, being duly sworn, deposes and says:

I am one of the named plaintiffs in the above-entitled action.

I have been advised by my attorney, Mr. I.Walton Bader, that I failed to submit signed interrogatory answers as required by a prior order of this Court.

I deny that this is the case. I did, in fact, comply with the Order involved.

The facts are as follows:

I received, about August 30th,1974, original unsigned interrogatory answers from Mr. Bader. Copy of the papers that I received are annexed to this affidavit as "EXHIBIT A".

I immediately signed the same where indicated and returned them to Mr. Bader in an envelope addressed to his office, 274 Madison Avenue, New York,N.Y.

Apparently Mr. Bader never received these signed answers and now informs me that on September 10th,197 he addressed a letter to me annexed to this affidavit as "EXHIBIT B" calling attention to the fact that I had not complied with the Order o

the Court.

I have never received this letter and was unaware of the fact that Mr. Bader had not received proper signed copies of my interrogatory answers.

I have read the answers set forth in Exhibit A annexed hereto and confirm that they are correct and I certify that I signed these answers about August 30th,1974 recognizing that the said signature was under oath.

Michael P. Fagan

Michael Fagan

Sworn to before me
this 22nd day of March 1976

J. Walton Bader

Notary Public

J. WALTON BADER
NOTARY PUBLIC, STATE OF NEW YORK
No. [illegible]
Qualified in [illegible]
Commission Expires [illegible] 1977

* * * *

[Exhibits A and B to the preceding affidavit of Michael Fagan are not reproduced here. Other copies of the same documents appear elsewhere in this Appendix, as follows:

Exhibit A -	Further Answers to the First Interrogatories of the Defendant, Touche, Ross & Company, by Plaintiff, Michael Fagan	pp. 304-306
Exhibit B -	Letter from I. Walton Bader to Michael Fagan and Gary Michael	pp. 469

The moving papers submitted with the notice of motion to vacate injunction and for other relief also included a copy of the affidavit of Vincent J. LaPorta and a copy of the appellants' brief on a prior appeal in this case, neither of which is reproduced here. Another copy of the affidavit of Mr. LaPorta appears at page 671 above; appellants' brief is not reproduced in this Appendix].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

HARRY LEWIS, et al.,	:	73 Civil 3929 (LFM) 73 Civil 4109
Plaintiffs,	:	73 Civil 4133 73 Civil 4895
-against-	:	73 Civil 3025 74 Civil 3281
TELEPROMPTER CORP. et al.,	:	74 Civil 4341
Defendants.	:	ANSWERING AFFIDAVIT

- -x

ANSWERING AFFIDAVIT OF DEFENDANT TOUCHE ROSS & CO. ON MOTION OF BADER & BADER, ESQS. DATED APRIL 22, 1976, RETURNABLE MAY 7, 1976.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Freund Lewis and Cohen, attorneys for defendant Touche Ross & Co. ("Touche Ross"). I make this affidavit in opposition to the motion brought on by notice of motion dated April 22, 1976 signed by Bader & Bader, Esqs.

The motion is made in three parts:

1. To modify the injunctive provisions in this Court's order of consolidation dated November 15, 1974 to permit Independent Investor Protective League ("IIPL") and certain named persons to institute class litigation against Touche Ross in the New York State Court on the

theory of negligence and against all defendants on behalf of stockholders who purchased and then merely held their Teleprompter stock.

2. To induce the Court to take certain action on the basis of which I. Walton Bader, Esq., who makes the supporting affirmation, intends to contend that Hon. Richard Owen, U.S.D.J., will no longer have jurisdiction to impose monetary sanctions on Mr. Bader and IIPL.

3. Pursuant to Fed. R. Civ. P. 60(b), on the ground of "newly discovered evidence" to grant "reconsideration" of Judge Owen's order holding that Mr. Bader and IIPL, through one of its officials, made false statements and gave false testimony.

A copy of Judge Owen's opinion and order is annexed hereto as Exhibit A.

There is no substance to any part of the motion. Indeed, the only real question is whether Mr. Bader can with impunity continue to make untrue statements to the Court (pp. 8-10 infra). Because this motion is without substance and brought to vex and harass, we request that costs, including attorneys' fees, be imposed upon Mr. Bader. See F. D. Rich Co. v. Industrial Lumber Co., 417 U.S. 116, 129 (1974). Expenses were in another context imposed upon Mr. Bader in United Sheeplined Cloth. Co. v. Arctic Fur Cap. Corp., 165 F. Supp. 193 (S.D.N.Y. 1958).

I

THE MOTION TO MODIFY THE INJUNCTIVE PROVISIONS

Mr. Bader is here seeking affirmative authorization from the Court for leave to institute suit in the State court. Such authorization should not be given for at least the following reasons:

(a)

The named persons who apparently wish to institute the class litigation in the State court are IIPL, Michael Fagan ("Fagan"), Martin Randolph ("Randolph") and the following persons: Sadie Mosner ("Mosner"), Rose L. Gross, G. Dixon Mahon, Robert W. Stoddard and John C. Bernius.

IIPL, Fagan and Randolph were named plaintiffs in the action of "Independent Investor Protective League et al. v. Teleprompter Corp. et al." (73 Civ. 4133). The amended complaint in that action (Exhibit B annexed hereto), which stated that IIPL was suing "in behalf of its membership affected," listed as members affected by the acts therein alleged all of the aforesaid persons except Mosner, who was thereafter stated to be another member so affected.

On January 9, 1976, Judge Owen dismissed that action as to Touche Ross "with prejudice" and directed that IIPL and Mr. Bader pay to Touche Ross its expenses, including attorneys' fees, incurred by reason of the circumstances leading to the entry of that order (Exhibit A annexed).

Judge Owen found that Mr. Bader and IIPL, pursuant to

a "concocted story," ". . . made false statements and gave false testimony pursuant to an evolving plan to first deceive counsel and later the Court as to the circumstances surrounding the mailing of the purported 'answers' to interrogatories on behalf of plaintiffs Independent Investor Protective League and Fagan, Michael and Randolph on September 5, 1974."

In the amended complaint (Exhibit B annexed, par. Tenth) it was alleged that Touche Ross was liable by virtue of its having certified Teleprompter's financial statements, an allegation embracing negligence. The amended complaint also (par. Fifth) asserted claims against Touche Ross under many statutory provisions other than Section 10(b) of the Securities Exchange Act of 1934 (the subject of Ernst & Ernst v. Hochfelder, _____U.S._____), and included a pendent common law count.

It is evident that the dismissal by Judge Owen of the action against Touche Ross "with prejudice" prevents any action in the State court against Touche Ross by any of the named persons. Cleveland v. Higgins, 148 F. 2d 722, 724 (2d Cir. 1945), cert. den. 326 U.S. 722 (1945); Nasser v. Isthmian Lines, 331 F. 2d 124 (2d Cir. 1964.)

(b)

Although Mr. Bader states that there is some form of class action that the named persons can bring in the State court, he has not demonstrated that there is any such action that they can bring. It is apparent that leave is sought for purposes of harassment and particularly as a retaliation

tory measure against Touche Ross for the part it played in connection with the issuance of Judge Owen's order.

(c)

There is nothing to show that Mr. Bader is authorized to speak for the persons named by him or that they have authorized him to institute suit in the State court.

(d)

Any action in the State court is likely to conflict with this action. For example, if the proof in an action in the State court showed conduct on the part of Touche Ross (or for that matter any defendant) for which recovery can be granted in this action, there is a possibility of conflicting determinations. Further, there will inevitably be duplication of pre-trial proceedings and a likelihood of conflicting pre-trial determinations -- indeed, a probability of the creation of a general state of chaos; which it is all too apparent this motion is intended to achieve.

(e)

By reason of the circumstances set forth in Judge Owen's decision (Exhibit A annexed), neither the plaintiffs in 73 Civ. 4133, the members of IIPL purportedly represented by it therein, nor their counsel, are proper representatives to prosecute any action on behalf of any class.

This motion should be denied.

II

THE MOTION TO HAVE THE COURT DETERMINE THAT JUDGE OWEN HAS NO JURISDICTION TO IMPOSE SANCTIONS ON IIPL AND MR. BADER

In this connection, Mr. Bader says that he is relying on Appellants' Brief in the Court of Appeals for the Second Circuit on the appeal from Judge Owen's order. We accordingly annex hereto as Exhibit E a copy of the Appellee's Brief on that appeal.

As shown in the Appellee's Brief, pp. 11-12, after Judge Owen directed an evidentiary hearing into the matters which eventually led to his dismissal order, Mr. Bader employed various devices to prevent such hearing from going forward. One of these devices was the filing of Rule 41(a)(1)(i) notices of voluntary dismissal in 73 Civ. 4133 in an attempt to oust Judge Owen of jurisdiction. One of those notices, relating to Randolph, dated October 9, 1974, was signed ex parte by Judge MacMahon on October 15, 1974. The other, relating to IIPL, Fagan and Michael, was dated October 28, 1974, but was not signed by Judge MacMahon until January 23, 1976, after Judge Owen had made his order of dismissal of January 9, 1976.

Mr. Bader has argued to the Court of Appeals that Judge MacMahon's signature to the latter notice had retroactive effect so that Judge Owen had no jurisdiction to proceed with the evidentiary hearing at all. Mr. Bader now asks the Court to make a determination that Judge Owen lost jurisdiction as of January 23, 1976 so that Judge Owen

cannot proceed to fix the monetary sanctions imposed upon IIPL and Mr. Bader, the amounts of which have not yet been fixed.

As a matter of law, the Rule 41(a)(1) notices of voluntary dismissals were and are nullities. The action in which they were filed is a class action and Rule 41(a)(1) voluntary dismissals may not properly be filed in such actions. Dismissal of a class action can only be effected pursuant to Rule 23(e). A Rule 41(a)(1) notice of voluntary dismissal, if it may properly be employed, is effective when filed and the signature of a Judge can neither add to nor detract from the effectiveness of the notice. On the other hand, if a Rule 41(a)(1) notice of voluntary dismissal is improperly filed, a Judge has no power to endow it with validity by endorsing it and the notice remains as much a nullity after his signature as before.

This is discussed in the attached Appellee's Brief at pp. 37-39.

This attempt by Mr. Bader to have the Court take action in an attempt to oust Judge Owen of jurisdiction should be denied.

III

THE MOTION PURSUANT TO RULE 60(b)

This is a motion for "reconsideration" of Judge Owen's

decision on the ground of "newly discovered" evidence.

An appeal to the Court of Appeals for the Second Circuit from Judge Owen's order is pending, and in that connection Mr. Bader has made a motion to remand to Judge Owen for consideration of the very matters he now asks this Court to consider. That motion to remand is to be heard on May 11, 1976. Mr. Bader has also presented to Judge Owen one of the affidavits on which the instant motion is made, namely, that of Mr. La Porta.

It is apparent that the motion is made before this Court in an attempt to take advantage of its lack of familiarity with all the circumstances. Proper judicial procedure prescribes that any such motion as this be made before Judge Owen. United States v. Fluor Corporation, 436 F. 2d 383, 385 (2d Cir. 1970), cert. den. 402 U.S. 945 (1971); In re Hines, 88 F. 2d 423, 425 (2d Cir. 1937); Dictograph Products Company v. Sonotone Corporation, 230 F. 2d 131, 135 (2d Cir. 1956); United States v. Cavell, 164 F. Supp. 957, 959 (W.D. Pa. 1958).

The motion should accordingly be denied.

By reason of this, we do not address ourselves here to any of the issues raised by the application, although in Appellee's Brief (at pp. 24-25 and in the second footnote on p. 13) it is shown that it has no merit.

It is, however, to be noted that in giving purported reasons why this so-called "newly discovered" evidence was not sooner presented to the Court, Mr. Bader has made another

statement of the kind which led Judge Owen to note in his decision that, with respect to Mr. Bader, he was referring the record for consideration pursuant to Rule 5(f) of the General Rules of this Court dealing with the disciplining of attorneys.

The motion to dismiss that led to the evidentiary hearing before Judge Owen was argued on September 20, 1974 and the hearings before Judge Owen began November 4, 1974.

One of the issues at the hearing before Judge Owen was the time when the last mail was delivered to Mr. Bader's office on September 5, 1974. Judge Owen found that at the argument on September 20, Mr. Bader said that the last mail had come in that day after he had allegedly left his office at about 3:00 P.M. Judge Owen found on the basis of Post Office records that the last mail that day was delivered between 1:30 P.M. and 1:45 P.M.* Mr. Bader, in seeking to explain the delay until at least mid-February 1976 in presenting the (in any event utterly irrelevant) affidavit of the mail carrier, says in part in his affirmation (p. 3):

> "Also, it was not until the hearings actually commenced that the question of the time of the mail delivery became important. Thus, until the opinion of the District Court was issued, it did not seem to the undersigned that it was necessary to investigate the mail delivery problem."**

The fact is that two exhibits introduced by Mr. Bader

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* It may be noted that the affidavit of Mr. La Porta (the mail carrier) now presented by Mr. Bader does not take issue with that time.

** The second sentence, beginning "Thus", is, of course, a non sequitur. If the question of the time of the mail delivery "became important" at the hearings, then obviously it was necessary to investigate the question then, which could easily have been done since the mail carrier and his station were identified at the hearings.

at the hearings show that he knew before the hearings commenced that the question of the time of the mail delivery was important and that he then investigated the subject.

On September 27, 1974, Mr. Bader wrote a letter to the Post Office asking it to "confirm" his belief that mail was delivered to his office at about 8:30 A.M., 10:00 A.M. and 3:00 P.M.; and on October 16, 1974 the Post Office replied. Copies of those letters are annexed hereto as Exhibits C and D, respectively. Both those dates were well before the hearings commenced on November 4, 1976.

CONCLUSION

1. The motion to modify the Court's injunction should be denied.

2. The motion made in an effort to oust Judge Owen of jurisdiction should be denied.

3. The motion pursuant to Fed. R. Civ. P. 60(b) should be denied.

4. Costs, including attorneys' fees, should be imposed upon Mr. Bader and awarded to Touche Ross.

Lawrence R. Eno
LAWRENCE R. ENO

Sworn to before me this
3rd day of May, 1976.

Marlene Herman
Notary Public

[illegible] 78

* * * *

[Exhibits A to D to the preceding Answering Affidavit of Defendant Touche Ross & Co. are not reproduced here. Other copies of the same documents appear elsewhere in this Appendix, as follows:

Exhibit A	-	Opinion and Order of Judge Owen dated January 9, 1976	pp.A-25 to A-42
Exhibit B	-	Amended Complaint	pp.386-394
Exhibit C	-	Letter from I. Walton Bader to Postal Information	pp.226
Exhibit D	-	Letter from Postmaster to I. Walton Bader	pp. 227

There follow certain excerpts from Exhibit E to the affidavit, which is a copy of defendant-appellee Touche Ross & Co.'s brief on a prior appeal].

* * * *

POINT VII

The claim that the District Court had no jurisdiction to proceed.

Appellants' Brief (pp. 25-29) claims that upon the filing of the several purported notices of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(i) before any answer or motion for summary judgment had been filed (p. 12 *supra*), the Court lost all jurisdiction to proceed. However, whatever might otherwise have been the case, this action is a class action and there had not been at the time, and there never was, a determination that it was not a class action (JA A5, A9-12).* The right to dismiss the action is therefore governed not by Rule 41(a)(1) but by Fed. R. Civ. P. 23(e) which provides that "A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs."

Fed. R. Civ. P. 41(a)(1) expressly provides that it is "Subject to the provisions of Rule 23(e)", making clear on its face that it does not apply to class actions. As stated in 3B Moore's *Federal Practice* (2d ed.) ¶23.80 [2.-1]:

> "The provision of revised [23](e), like its predecessor in original (c), that a class action *shall not be dismissed* without court approval is mandatory, and while the requirement as to notice does not apply to involuntary dismissals, the requirement of court approval does. Rule 23(e) is a recognized exception to the general applicability of Rule 41(a)(1), on voluntary dismissal before trial; . . .
>
> . . . and it has been held that prior to the court's initial determination, required by Rule 23(c)(1), as to whether an action brought as a class action is to be so

* The notice with respect to Randolph, the first filed, specifically recited: "This action continues as a Class Action against all Defendants in behalf of Plaintiff Independent Investor Protective League" (JA 229-230).

maintained, the action must be presumed to be a class action subject to the requirements of Rule 23(e)." (matter in brackets inserted).

In accord: 3B Moore, *supra* ¶23.80[2]; *Gaddis* v. *Wyman*, 304 F. Supp. 713, 715 (S.D.N.Y. 1969); *Philadelphia Electric Co.* v. *Anaconda American Brass Co.*, 42 F.R.D. 324 (E.D. Pa. 1967); *Yaffe* v. *Detroit Steel Corp.*, 50 F.R.D. 481 (N.D. Ill. 1970).

Appellants' Brief (p. 29) states that notices of voluntary dismissal are effective in a class action where it has not yet been certified as such, but no authority is cited in support of that proposition. All of the authorities cited above are expressly and directly contrary to appellants' assertion.

Appellants' Brief correctly notes that if a Rule 41(a)(1)(i) voluntary dismissal is appropriate, it is effective upon filing with the clerk of the Court without Court approval. *Miller* v. *Reddin*, 422 F.2d 1264 (9th Cir. 1970); *American Cyanamid Company* v. *McGhee*, 317 F.2d 295 (5th Cir. 1963). However, where such a voluntary dismissal may *not* properly be filed, the Court has no power by its endorsement to endow it with validity. *Hyde Construction Company* v. *Koehring Company*, 388 F.2d 501, 508 (10th Cir. 1968), cert. den. 391 U.S. 905 (1968).

In this case, the Rule 41(a)(1)(i) notice as to Randolph, the first notice filed, was signed by Judge MacMahon on October 15, 1974 (JA 229-230). Touche Ross had received a copy of a letter dated October 9, 1974 from Mr. Bader to Judge Owen enclosing an unconformed copy of that notice which Mr. Bader said he felt it "appropriate" to file (SA 1-7) and there was no provision in it for Court approval and no notice that Court approval would be sought. On October 15, 1974, although consolidation was contemplated, none had been effected (JA 430-435). Judge MacMahon's signature gave no validity to the Rule 41(a)(1)(i) notice (*Hyde Construction Company* v. *Koehring Company*, *supra*), and having been obtained *ex parte*, without any notice to the Rosenman firm or the "class", there was obviously a failure to meet the requirements of Rule 23(e).

After the Rosenman firm learned of the circumstances and brought the foregoing to Judge MacMahon's attention (JA 600-601), he withheld any signature from the purported Rule 41(a)(1)(i) voluntary dismissal of IIPL, Michael and Fagan until after Judge Owen's order had been entered (JA 228).

The Rule 41(a)(1)(i) notices of voluntary dismissal were accordingly nullities, and Judge Owen had jurisdiction to proceed as he did.

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

HARRY LEWIS, et al,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al,

Defendants.

----------x

73 Civil 3929 (LFM)
73 Civil 4109
73 Civil 4133
73 Civil 4895
73 Civil 3025
74 Civil 3281
74 Civil 4341

REPLY AFFIRMATION

REPLY AFFIRMATION OF I. WALTON BADER ON MOTION TO VACATE INJUNCTION AND FOR OTHER RELIEF

STATE OF NEW YORK)
) SS.:
COUNTY OF WESTCHESTER)

I. WALTON BADER, a member of the bar of the State of New York, hereby states the following under penalties of perjury: This document has the force of an affidavit under the laws of the State of New York.

I am one of the attorneys for the moving parties herein and am fully familiar with the facts and circumstances of this action.

I will ignore the personal attacks made upon me by Lawrence R. Eno with respect to his unjustified claim that I "continue to make untrue statements to the Court". As a matter of fact, the only clear untrue statement that has been made in this whole action is an admittedly false affidavit filed by the same Lawrence R. Eno (See Appellant's Brief in the Court of Appeals, page 3).

Furthermore, it was necessary for the undersigned to proceed the way he did before Judge MacMahon because of the pro-

cedural posture of this case. The injunctive order involved herein is an injunctive order of Judge MacMahon. The order granted voluntary dismissal against the plaintiff, Independent Investor Protective League, was signed by Judge MacMahon. Therefore, motions with respect to this matter must be initially made before Judge MacMahon.

It is true that, in the event that the District Court still has jurisdiction in this action and the plaintiffs seek modification of Judge Owen's order based upon newly discovered evidence, such an application might properly come before Judge Owen. However, the coordinating Clerk of this Court, Mr. Sexton, has informed the undersigned that since these cases are assigned to Judge MacMahon, any application must be made before Judge MacMahon. Quite obviously, Judge MacMahon has the power to refer any part of this motion to Judge Owen and this is a matter of jucicial discretion vested in Judge MacMahon.

Mr. Eno further claims that this motion is an attempt to oust Judge Owen of jurisdiction in the case. This is just not so. The present action is a "procedural morass". It is before two District Judges (Judge MacMahon and Judge Owen), before the Court of Appeals on an appeal which Mr. Eno claims is from a "final order" and there is a motion presently pending before the Court of Appeals to remand this action to the District Court. The motion to remand will be argued before the Court of Appeals on May 11, 1976.

Were the defendant, Touche Ross, anxious to properly resolve this case procedurally, it would have consented to the

motion to remand. At that point, Judge MacMahon would have clear jurisdiction to consider the present motion and would then determine the manner of future procedure.

Judge Owen further found in his Order that proper notice of voluntary dismissal was filed with respect to the plaintiffs Randolph and Fagan. Hence, these parties are not affected by any dismissal by Judge Owen and have a right to re-commence an action (Cf. Rule 41(d) FRCP).

The defendant, Touche Ross, claims that by reason of the fact that the plaintiffs, Randolph and Fagan, were members of the plaintiff, Independent Investor Protective League, that the dismissal by Judge Owen of the claims made by the plaintiff, Independent Investor Protective League in behalf of its membership affected, with prejudice, bars these plaintiffs from bringing any individual action in any court.

The plaintiffs do not believe that this is correct.

Mr. Kornreich's affidavit, submitted on behalf of lead counsel, in opposition to this motion with respect to the injunctive relief portion thereof, is a well drawn document which the undersigned believes is quite helpful to the Court. While the undersigned believes Mr. Kornreich is incorrect in his position, he makes rather cogent points. Mr. Kornreich points out that the consolidated complaint provides for common law claims against the defendant, Touche Ross, as well as claims under the Securities Acts and, therefore, these claims are under the jurisdiction of this Court under the provisions of "pendent jurisdiction". The undersigned believes that if this Court follows Rich v. Touche Ross, (Cited in plaintiffs' memorandum), this Court

would decline jurisdiction of the State claims. However, if this Court affirmatively states that pendent jurisdiction of the State claim for common-law negligence is being retained in this case, then there would be no need for the plaintiffs to bring separate State litigation against Touche Ross. The determination as to whether the Court will take pendent jurisdiction of the State common-law claims must be made immediately since otherwise the State statute of limitations may run on the claim.

The claims under the New York Securities Acts are of a more serious nature. The case cited by Mr. Kornreich in his memorandum (Colon v. East Coast Insurance Co., 39 A.D.2d 533) is an Appellate Division decision of the First Department and does not support lead counsel's view that a purchaser of stock prior to the class period who suffered a decline in value of the stock is not a party who can claim damages under the New York State Securities Acts. The Appellate Division of the First Department apparently takes the view that a purchaser who purchased stock prior to the commencement of a fradulent act and who subsequently holds the stock does not suffer any damage. Assuming that this decision sets forth the law of the State of New York (which is highly questionable), it seems obvious to the undersigned that if the person suffering damage would thereafter sell his stock and establish his loss, he would be entitled to recover under New York State law. Obviously, prior to commencing any New York State suit, the undersigned would ascertain whether any of the named plaintiffs in this action have sold their Teleprompter shares.

It is also to be noted that pursuant to pages 423 and 424 of the joint appendix, the plaintiff Randolph sold 1,000 shares of Teleprompter stock between August 10, 1973 and November 12, 1973. Since the "class period" as granted by Judge MacMahon in this action covers the period April 1, 1973 to September 7, 1973, it is noted that Randolph sold 200 shares on November 12, 1973 which is subsequent to the class period as set forth by Judge MacMahon. Therefore, if a class were defined in State Court proceedings as constituting those purchases of Teleprompter stock prior to April 1, 1973, who held such stock between April 1, 1973 and September 7, 1973 and who subsequently sold such stock at a loss, such a class would not be within the class as defined by Judge MacMahon in the consolidated actions but would be grounds for action under New York State law despite the holding in Colon.

The New York State Securities Acts involved are Section 339-a of the General Business Law and Section 352-c(1) of the General Business Law of the State of New York. These sections, as read by the undersigned, do not bar an application such as the one proposed by the plaintiffs.

Section 352-c of the General Business Law of the State of New York permits an action to be brought "regardless of whether issuance, distribution, exchange, negotiation or purchase resulted".

Section 339-a of the General Business Law provides for action against any false statement made by any person where the

statement is made with intent to deceive. Both of these sections do not, in the opinion of the undersigned, contain the purchaser-seller limitation that is present in the Federal Securities Acts.

The plaintiffs should be entitled "to establish the law" with respect to claims of this nature where the law is uncertain and the Court of Appeals of the State of New York has not passed upon the issue.

WHEREFORE, the undersigned prays th t the motion made herein be in all respects granted.

Dated: May 5, 1976

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

HARRY LEWIS et al.,	:	73 Civil 3929 (LFM) 73 Civil 4109
Plaintiffs,	:	73 Civil 4133 73 Civil 4895
-against-	:	73 Civil 3025 74 Civil 3281
TELEPROMPTER CORP. et al.,	:	74 Civil 4341
Defendants.	:	REBUTTAL AFFIDAVIT

- -x

REBUTTAL AFFIDAVIT OF DEFENDANT
TOUCHE ROSS & CO. ON MOTION OF
BADER & BADER, ESQS. DATED APRIL
22, 1976, RETURNABLE MAY 7, 1976

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I make this affidavit in rebuttal of the affirmation of I. Walton Bader, Esq. dated May 5, 1976 received by us May 7, 1976.

There are at least two statements made by Mr. Bader in that affirmation which are incorrect:

1. Mr. Bader at p. 3 of his affirmation states that Judge Owen "found in his Order that proper notices of voluntary dismissal were filed with respect to the plaintiffs Randolph and Fagan." There was no such finding by Judge Owen, whose decision and order are Exhibit A to our answering affidavit.

2. At p. 5 of his affirmation, Mr. Bader refers the

Court to pp. 423-424 of the Joint Appendix on the appeal to the Court of Appeals by IIPL, Randolph and Mr. Bader from Judge Owen's order. That is a document purporting to set forth Randolph's purchases and sales which before Judge Owen Mr. Bader acknowledged was in "error" and which IIPL stated was at "variance" with Randolph's actual purchases and sales. If the information on this subject subsequently set forth by IIPL is correct, it would appear that the 200 shares allegedly sold by Randolph on November 12, 1973 was of stock purchased after April 1, 1973 and not stock purchased before that date.

Lawrence R. Eno
LAWRENCE R. ENO

Sworn to before me this
7th day of May, 1976.

Marlene Herman
Notary Public

MARLENE HERMAN
NOTARY PUBLIC, State of New York
No. 41-6857365
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 19 78

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et. al.

Plaintiffs

against

TELEPROMPTER CORP. et. al.

Defendants

73 Civil 3929 LFM
73 Civil 4109
73 Civil 4133
73 Civil 4895
73 Civil 3025
74 Civil 3281
74 Civil 4341

Consolidated for All Purposes

SUR-REBUTTAL AFFIDAVIT

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

I, WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document has the forceof an affidavit under the laws of the State of New York.

On the argument of this motion there were two claims made by the defendants. These were:

1. That the undersigned had filed a false affidavit in connection with this motion.

2. That the undersigned had not served two additional law firms representing defendants.

Both of these charges are nonsense but they must be replied to.

The defendant TOUCHE ROSS claims that the statement in my moving affidavit reading as follows is false.

> "* * *At the time of the hearings held by the District Court the only question involved was the receipt by the undersigned of signed interrogatory answers of the plaintiff RANDOLPH. Since a Notice of Voluntary Dismissal had been filed prior to the hearings with respect to the plaintiff RANDOLPH the problem with respect to the mail delivery did not appear

> important. Also, it was not until the hearings actually commenced that the question of the time of the mail delivery became important. Thus, until the opinion of the District Court was issued, it did not seem to the undersigned that it was necessary to investigate the mail delivery problem. (emphasis supplied)

The defendant TOUCHE ROSS claims that this is "false" because the plaintiffs (through the undersigned) did investigate the date of the mail delivery of the RANDOLPH answers by checking with the Post Office Department to determine if an Air Mail Letter mailed from San Diego California on September 3rd, 1974 would have reached New York on September 5th, 1974. This relates, of course, to the date of the mail delivery and not to the time. The actual time of the day when the Answers actually arrived at the office of the undersigned did not become important until the opinion of the District Court was issued and the statement made by the undersigned to that effect is absolutely correct.

While the defendant TOUCHE ROSS continues to make reckless statements impugning the integrity of the undersigned and seeking costs and attorneys fees with respect to statements alleged to be false which are clearly true the record in this action shows at least one admittedly false affidavit filed by the defendant TOUCHE ROSS attorney ENO. This appears in an affidavit filed September 17th, 1974 by the said ENO wherein there is a statement that the undersigned deliberately attempted to mislead counsel and the court. It was claimed, at that time, that the Interrogatory answers of IIPL and of the individual plaintiffs arrived in the same envelope (See Appellants' Brief pages 30-31). It was admitted subsequently by the same ENO that this was not correct.

In view of a continuation of the prior tactics it is submitted that this Court should appropriately insure that such conduct on the part of the attorney for TOUCHE ROSS should no

be permitted to continue.

It was also alleged before the Court that service of these motion papers was not made on all attorneys for the parties. Insofar as the undersigned is aware the parties in interest are lead counsel (Mr Jones), counsel for the defendant TOUCHE ROSS (Mr. Eno), counsel for the defendant TELEPROMPTER (Shea Gould), counsel for the defendants SCHLFLY, et. al. (Lawler, Sterling & Kent) and counsel for the other defendants (Markewich,Rosenhaus). All of these defendant's counsel were served with the present application. However, in view of the claims made, the undersigned has addressed the enclosed letter to the LAWLER and MARKEWICH firms so that, if either of these firms did, by some quirk in the mail, not have received the papers, copies can be sent to them.

The Court is further advised that the Court of Appeals for the Second Circuit heard argument on the appeal of the plaintiffs in 73 Civil 4133 from Judge Owen's Order (which the Court held to be appealable) and reserved decision. A motion to remand the appeal to the District Court for the consideration of new evidence is also before the Court of Appeals for determination.

In the meantime the undersigned has obtained new evidence in support of the portion of the application to reconsider Judge Owen's determination in addition to the evidence presently before the Court. There is annexed to this affirmation an affidavit of the purported plaintiff GARY MICHAEL showing, beyond doubt, that this party was not a plaintiff at the time of the date for service of further interrogatory answers (September 1974). The undersigned is aware of the fact that the MICHAEL affidavit does not have a venue thereupon. This is the form in which the affidavit was received by the undersigned and it is being submitted to the Court in the form received. A request has been made of the party MICHAEL for a

properly venued affidavit and, in addition, Mr. GARY MICHAEL has further interrogatory answers and a further affidavit to execute in connection with this action. However, in order to conform to time considerations, the papers in the hands of the undersigned at this time are being submitted.

In addition there are annexed to this affirmation a set of verified nunc pro tunc answers to interrogatories of the plaintiff MICHAEL FAGAN. These answers are identical to those sent by the said MICHAEL FAGAN to the undersigned on August 30th,1974 and which appearntly never reached the undersigned.

There is also annexed to this affirmation a letter from the attorney for the Public Administrator with respect to a client represented by the undersigned in another action. In this connection the Court is advised that where multiple stockholders are represented in litigation, and where the individual claim is small, plaintiffs sometime die without the undersigned being aware of it and, in other cases, plaintiffs lose interest in the litigation.

Actually, in my opinion, the key to the problems involved in this case is the "false" Mrs. Blacker who was the "office receptionist" having poor eyesight and who had the effrontery to give the name of my secretary, Mrs. Blacker, to one of the attorneys for the ROSENMAN COLIN firm representing TOUCHE ROSS. In my opinion this secretary (who is no longer employed by my former partner, Mr. Scher, and whose whereabouts are presently unknown), probably received, on September 3rd,1974, executed original answers to interrogatories verified by the plaintiff MICHAEL FAGAN. The undersigned suspects that either she misplaced these answers or mis-filed them. I further suspect that, on September 5th 1 97 ,

this secretary did not place the original RANDOLPH answers in the file box for the papers belonging to the undersigned until late in the day. Therefore, it is entirely possible that these answers did, in fact, arrive in the first mail delivery on September 5th,1974 but were not placed in the undersigned's file box until after 3PM of that day (long subsequent to the last mail delivery on that day). Thus they would have been properly discovered by SANDS after 3PM on September 5th,1974 as he testified during the hearings held by the Court.

It is therefore submitted that the newly discovered evidence clearly shows the veracity of the plaintiffs' witnesses insofar as their testimony is concerned and that the determination of the District Court to the effect that there were "false statements" and "false testimony" given is not correct.

WHEREFORE the undersigned prays that the motion for re-consideration of the determination by the District Court with respect to interrogatory answers be in all respects set aside based upon the new evidence submitted.

Dated : May 20th,1976

I.Walton Bader

AFFIRMATION OF SERVICE

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York, hereby certifies under penalties of perjury that on May 20th,1976 he served a copy of the foregoing AFFIRMATION and Exhibits annexed thereto upon PHILIP JONES, LAWLER,STERLING & KENT, SHEA,GOULD, ROSENMAN,COLIN and MARKEWICH,ROSENHAUS.,by mail.

Dated : May 20,1976

I.Walton Bader

N 2-6860
6861

CABLE ADDRESS: "BAPATENTS" NEW YORK
TELEX: BABKLN 036244 UW

LAW OFFICES
BADER AND BADER
270 MADISON AVENUE
NEW YORK, N.Y. 10016

MILIAN BADER
LTON BADER
BADER
T BADER (MASS. BAR)

REPRESENTED IN WASHINGTON, D.C.

May 20th, 1976

Re: Lewis vs. Teleprompter

Lawler, Sterling & Kent, Esqs.
460 Park Avenue
New York, N.Y.

Markewich, Rosenhaus & Markewich
350 Fifth Avenue
New York, N.Y.

Gentlemen,

I enclose rebuttal affidavit on the Motion made before Judge MacMahon to vacate the injunction against other suits in part and for re-consideration of a certain order issued by Judge Owen relating to the defendant TOUCHE ROSS & COMPANY.

On the argument of this motion opposing counsel claimed that they had checked with Your Firms and that you had not received copies of my original Motion Papers.

Since I personally mailed these copies to you I would appreciate knowing if, by the vagaries of the United States Mails, you did not receive such copies. If so I will send additional copies of the original papers to you and will so inform Judge Mac Mahon.

Very truly yours,

I. Walton Bader

IWB/iwb

HESTERBERG & KELLER
COUNSEL
32 COURT ST., BROOKLYN, N. Y. 11201
TELEPHONE 875-7449
875-7450

725

BEADIE MARKOWITZ
PUBLIC ADMINISTRATOR

OFFICE OF
PUBLIC ADMINISTRATOR OF KINGS COUNTY

May 7, 1976

I. Walton Bader, Esq.
65 Court Street
White Plains, N.Y. 10601

Re: Estate of JACK ROSENBERG
P. A. No. 11666
(Equity Funding Corporation of America Litigation)

Dear Mr. Bader:

Please be advised that the Public Administrator of Kings County is the administrator of the estate of Jack Rosenberg also known as Jacob Rosenberg. Mr. Rosenberg died on November 18, 1974. We are in receipt of "Verified Further Answers to Interrogatories of Certain Defendants in Trading Cases" to be verified by Jack Rosenberg.

Kindly advise the writer as to how the fiduciary may continue to proceed in this matter, and whether the Public Administrator, as administrator of the estate, should sign the verification in said capacity.

Very truly yours,

HESTERBERG & KELLER

By Frederick A. Margolin
Frederick A. Margolin

FAM:kh

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs

To be filed in
73 Civil 3929 LFM

73 Civil 4133 LFM

against

TELEPROMPTER CORP. et. al.

Defendants

AFFIDAVIT OF GARY MICHAEL

STATE OF
ss:
COUNTY OF

GARY MICHAEL, being duly sworn, deposes and says:

I was one of the original named plaintiffs in the above-entitled action.

In December 1973, after discussion with my attorney, I.WALTON BADER,Esq., by telephone, I decided to drop out of this action as a named plaintiff and informed Mr. Bader to take the necessary steps to drop me from this action as such named plaintiff. The reason for this action was by reason of my status as a law student since I was informed that a prospective member of the Bar should not engage in litigation as a party.

Mr. Bader, at that time, assured me that he would comply with my request and further informed me that I would still be a member of any Class certified by the Court in this action which had common rights to mine, even though I would not be a named party and would share pro rata in any Class Settlement.

Thus, when I received proposed answers to interrogatories about September 1974 I believed that I was obligated to sign them to protect my rights even though I was no longer a named plaintiff in the action.

Gary Michael

Sworn to before me
this 15th day of May 1976

Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al,

Defendants.
----------x

Civil Action
73 Civil 4133 (RO)

FURTHER ANSWERS TO THE FIRST INTERROGATORIES OF THE DEFENDANT, TOUCHE, ROSS & COMPANY, BY PLAINTIFF, MICHAEL FAGAN

The plaintiff, MICHAEL FAGAN, submits the following Supplemental Answers to the First Interrogatories of the defendant, TOUCHE, ROSS & COMPANY:

6. State (a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. ("Randolph"), Gary Michael ("Michael") and Michael Fagan ("Fagan").

Answer: My present address is Watson Lane, Danbury, Connecticut 06810. I am a conductor, employed by the Penn Central Railroad.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses and occupations other than those set forth in response to Interrogatory 6, and if so (b) state such other address and occupations.

Answer: I have no other address or occupation other than that listed above.

10. With respect to Fagan, state (a) (i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) the date of each subsequent purchase by him

of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth the purchase information with respect to Teleprompter Corp.: I have never sold any of such stock:

Dated of Purchase	No. of Shares Purchased	Price Per Share Paid
March 10, 1972	50	29-7/8

Dated: Nunc Pro Tunc as of August 29, 1974

Yours, etc.,

BADER AND BADER
Attorneys for Plaintiffs

By I. Walton Bader

I. Walton Bader
270 Madison Avenue
New York, N.Y. 10016
(212) 532-6860

TO: ALL THE ATTORNEYS FOR THE DEFENDANTS

VERIFICATION

STATE OF CONNECTICUT)
) SS.:
COUNTY OF FAIRFIELD)

MICHAEL FAGAN, being duly sworn, deposes and says that he has read the Answers to the foregoing interrogatories and knows the contents thereof; that the same is true of his own knowledge except as to matters stated therein alleged to be on information and belief and as to those matters he believes it to be true.

Michael P. Fagan
Michael Fagan

Sworn to before me this

15th day of May, 1976.
Nunc Pro Tunc as of
August 30, 1974

Notary Public
GEORGE D. HEYMANN
NOTARY PUBLIC
STATE OF CONNECTICUT
Commission Expires March 31, 1980

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a member of the bar of the State of New York, pursuant to CPLR, hereby certify, under penalties of perjury that on I mailed a true copy of the within document to all of the attorneys for the defendants.

I. Walton Bader

* * * *

[The reply brief submitted on a prior appeal, which was one of the attachments to the preceding Sur-Rebuttal Affidavit, has not been reproduced here or elsewhere in this Appendix].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

HARRY LEWIS et al.,	:	73 Civil 3929 (LFM)
		73 Civil 4109
Plaintiffs,	:	73 Civil 4133
		73 Civil 4895
-against-	:	73 Civil 3025
		74 Civil 3281
TELEPROMPTER CORP. et al.,	:	74 Civil 4341
Defendants.	:	

- -x

RESPONSE OF DEFENDANT TOUCHE ROSS & CO.
TO SUR-REBUTTAL AFFIDAVIT OF MAY 20, 1976
OF I. WALTON BADER, ESQ.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Freund Lewis & Cohen, attorneys for defendant Touche Ross & Co. ("Touche Ross").

My firm received in the mail on May 21, 1976 a so-called Sur-Rebuttal Affidavit of I. Walton Bader, Esq. dated May 20, 1976. That Sur-Rebuttal Affidavit is submitted in connection with a motion that was argued before the Court on May 7, 1976. The motion was taken under advisement by the Court pending the disposition by the Court of Appeals for the Second Circuit of an appeal from an order of Hon. Richard Owen, U.S.D.J. dated January 9, 1976. That appeal was argued on May 11, 1976.

As far as we know, no leave to file additional papers on the motion was given by the Court. If, therefore, Mr. Bader's affidavit is received by the Court, we request that this affidavit likewise be considered.

A

Mr. Bader in his new affidavit continues to make untrue and misleading statements to the Court:

1. As pointed out in our answering affidavit (pp. 9-10), Mr. Bader, in his moving affidavit (p. 3), made statements to the effect that it was not until Judge Owen's decision on January 9, 1976 that it seemed to him "that it was necessary to investigate the mail delivery problem" -- and that this was refuted by letters that he had sent to, and received from, the United States Post Office in September and October 1974 respectively (Exhibits C and D respectively to our moving affidavit).

Mr. Bader did not contest this in his reply affidavit on this motion, but he now says (p. 2) that his prior investigation concerned the "date" that certain purported answers to interrogatories would have been received in his office, and not the "time of day" they were received; and that the latter matter "did not become important until the opinion of the District Court [Judge Owen] was issued." The aforesaid letters themselves (Exhibits C and D) refute Mr. Bader's present claim because he there sought confirmation from the United States Post Office that mail was delivered to his office "at 8:30 A.M., 10:00 A.M. and

3:00 P.M.", showing that he was then investigating the "time of day" mail was delivered to his office.

For further proof that before the hearings before Judge Owen, and during those hearings, Mr. Bader knew that the time of day when mail was delivered to his office was in issue, see Judge Owen's opinion (Exhibit A to our answering affidavit, pp. 10-11, especially footnote 11 referring to testimony of the United States Post Office at the hearings as to the time of day mail was delivered to Mr. Bader's office) and our brief in the Court of Appeals (Exhibit E to our answering affidavit) especially pp. 10-11, 13, 15-16. We could enlarge upon this showing, but we believe that what has been said is sufficient for present purposes.

2. On the argument of the motion on May 7, 1976, one defendant's counsel noted that notice of the motion had not been served on all defendants' counsel. While Mr. Bader now says (p. 1) that this statement of counsel is "nonsense", he in fact admits (p. 3) that he did not serve the notice on all defendants' counsel. Apparently at least the following defendants' counsel were never served: Paul Weiss Rifkind Wharton & Garrison, Anderson & Goldman, Holtzmann Wise & Shepard, Milbank Tweed Hadley & McCloy, Katz Leavy Rosensweig & Sindle. This despite the fact that Mr. Bader's notice of motion states that it was addressed to "Defendants' Attorneys" without exception.

Mr. Bader now says (p. 3) that he thought that only some of defendants were "parties in interest." Since

part of Mr. Bader's motion related to a modification of the injunctive provisions contained in this Court's consolidation order, it is obvious that Mr. Bader's motion affected all of the defendants, and all of the defendants' counsel should have been served with the notice of motion--as indeed Mr. Bader indicated had been done. The statement of defendant's counsel on the argument was true: Mr. Bader's notice of motion was misleading.

B

In connection with his Rule 60(b) motion, Mr. Bader submits two documents: (a) an affidavit dated May 15, 1976 of Gary Michael ("Michael"), a plaintiff in 73 Civ. 4133, to the effect that he told Mr. Bader in December 1973 to drop him out of that action as a named plaintiff, and (b) answers to interrogatories by Michael Fagan ("Fagan"), another plaintiff in 73 Civ. 4133, purportedly sworn to May 13, 1976.

Neither of these matters constitutes "newly discovered evidence" and neither, even if accepted on its face, can in any way affect the determination made by Judge Owen.

Insofar as Michael is concerned, the matter is dealt with in our brief to the Court of Appeals (Exhibit E to our answering affidavit) at pp. 29-30. As there shown, no matter what Michael's alleged conversation with Mr. Bader may have been, Michael remained a named plaintiff in 73 Civ. 4133 after December 1973 and was treated as such by Mr. Bader and others. Indeed, Michael, in answers to

interrogatories purportedly sworn to on September 16, 1974, referred to himself as "The Plaintiff Michael Fagan"; and information for those answers was allegedly forwarded in response to a letter that Mr. Bader claims to have sent to Michael on August 15, 1974 warning him that he "might be dropped as a party" if he did not forward such information. In addition, even if Michael were not a party after December 1973, that could not change the determination made by Judge Owen.

Insofar as Fagan is concerned, the matter is dealt with in our brief to the Court of Appeals (Exhibit E to our answering affidavit) at pp. 24-25. We there show that Mr. Bader's claim with respect to Fagan's purported answers simply confirms the correctness of Judge Owen's determination. We need not comment on an attempt, if such it be, to cure a default that occurred on September 5, 1974 by presenting, after the action has been dismissed, answers to interrogatories sworn to May 13, 1976 "nunc pro tunc as of August 30, 1974" and signed by Mr. Bader "nunc pro tunc as of August 29, 1974."

Finally, Mr. Bader "suspects" that perhaps the receptionist in his office at the time (whose present whereabouts are allegedly unknown) "misplaced or mis-filed" the answers to interrogatories which Fagan allegedly sent on August 30, 1974 but which were never received by Mr. Bader (and which neither Mr. Bader nor Fagan allegedly found out had not been received for more than 1 1/2 years) and did not put the Randolph answers in Mr. Bader's "file

box" until late in the day of September 5, 1974. These belated "suspicions" are neither evidence nor newly discovered; and, in any event, cannot affect Judge Owen's determination.

Lawrence R. Eno
LAWRENCE R. ENO

Sworn to before me this
21st day of May, 1976.

Marlene Herman
Notary Public

MARLENE HERMAN
NOTARY PUBLIC, State of New York
No. 41-6867365
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 19 78

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et. al. Plaintiffs against TELEPROMPTER CORP. et. al. Defendants	73 Civil 3929 LFM 73 Civil 4109 73 Civil 4133 73 Civil 4895 73 Civil 3025 74 Civil 3281 74 Civil 4341 Consolidated for All Purposes

REPLYING AFFIDAVIT TO AFFIDAVIT
OF LAWRENCE R. ENO

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, being duly sworn, deposes and says:

I am one of the attorneys for the plaintiffs in 73 Civil 4133 and am fully familiar with the facts and circumstances of this action.

In order to complete the record with respect to the portion of the Motion before the Court relating to Rule 60(b) reconsideration of Judge Owen's determination in 73 Civil 4133 (which is now before the Court of Appeals for determination of the appeal filed by the undersigned) the following documents are submitted.

a. Properly venued affidavit of MICHAEL with respect to his status as a plaintiff.

b. Further answers to interrogatories of MICHAEL (showing a sale of Teleprompter Stock making him a proper Class Representative under New York State Securities Laws).

c. Ratification of original answers to interrogatories by GARY MICHAEL which were served by error in unconformed form on September 5th, 1974).

Interestingly enough the ENO affidavit submitted in opposition to the "Sur-Rebuttal Affidavit" of the undersigned supports the position of the undersigned that GARY MICHAEL was included in this suit as a plaintiff after the filing of the Amended Complaint by error.

The undersigned pointed out that there was confusion between GARY MICHAEL (who was dropped as a plaintiff when the Amended Complaint was filed in this case) and MICHAEL FAGAN (who has always been a plaintiff in this case prior to the filing of a Notice of Voluntary Dismissal).

In the ENO affidavit the same mistake is made and the Court is apprised of the fact that in answers to interrogatories there was a statement to the effect that the answers were made by "The plaintiff Michael Fagan". A reading of the context of the statement in the affidavit shows that what was meant was "The plaintiff Gary Michael". A more clear proof of the truth of the statement made by the undersigned would be hard to find .

WHEREFORE the undersigned prays that the applications made herein be in all respects granted.

I. Walton Bader

Sworn to before me
this 25th day of May 1976

ALBERT E. YURIO
Notary Public, State of New York
No. 60-9770325
Qualified in Westchester County
Commission Expires March 30, 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.,

Plaintiffs,

-against-

TELEPROMPTER CORP , et al,

Defendants.
----------x

73 Civil 4133 LFM

AFFIDAVIT OF GARY MICHAEL

STATE OF VERMONT)
) SS.:
COUNTY OF WINDSOR)

GARY MICHAEL, being duly sworn, deposes and says:

I was one of the original named plaintiffs in the above-entitled action.

In December 1973, after discussion with my attorney, I. WALTON BADER, Esq., by telephone, I decided to drop out of this action as a named plaintiff and informed Mr. Bader to take the necessary steps to drop me from this action as such named plaintiff. The reason for this action was by reason of my status as a law student since I was informed that a prospective member of the Bar should not engage in litigation as a party.

Mr. Bader, at that time, assured me that he would comply with my request and further informed me that I would still be a member of any Class certified by the Court in this action which had common rights to mine, even though I would not be a named party and would share pro rata in any Class Settlement.

Thus, when I received proposed answers to interrogatories about September 1974, I believed that I was obligated to sign them to protect my rights even though I was no longer a named plaintiff in the action.

Gary Michael

Gary Michael

Sworn to before me
this 21 day of May, 1976

Notary Public

Orange County Notary Public
Leonidge VT 05671
Comm exp 2/10/79

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, etc.

Plaintiffs

Civil Action
73 Civil 4133 (LFM)

against

TELEPROMPTER CORP. et. al.

Defendants

SUPPLEMENTAL ANSWERS TO INTERROGATORIES
OF DEFENDANT TOUCHE ROSS & COMPANY

GARY MICHAEL submits the following Supplemental Answers to Interrogatories of the defendant TOUCHE ROSS & COMPANY. These answers represent the facts as of the date hereof. The answers follow the respective interrogatory.

6. State(a) the addresses and (b) the occupations of each of Martin F. Randolph, Jr. "Randolph", Gary Michael "Michael" and Michael Fagan "Fagan".

Answer: Prior to August 1974 I resided at 100 Chalet Village Stockbridge, Vermont. In August 1974 I moved to Lower Christian Hill, RFD #1 Bethel Vermont where I presently reside. I am a law student.

7. (a) State whether any of Randolph, Michael and Fagan have any addresses or occupations other than those set forth in response to interrogatory 6, and, of so (b) state such other addresses and occupations.

Answer: Other than the addresses and occupations set forth hereinabove I have no others.

9. With respect to Michael, state (a)(i) the date when he first purchased shares of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share paid for said shares, (b) (i) the date of each subsequent purchase by him of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each such purchase, (c)(i) the date of each sale by him of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such date, (d) the number of shares of Teleprompter presently owned by him, and (e) in each instance the name in which the shares were or are held.

Answer: The following sets forth present purchase and sale information. The stock involved is registered in my own name.

Date of Purchase	Number of shares purchased	Purchase price per share
March 10,1972 (trade date) April 1,1972 (settlement payment date)	100	$30.00

Date of Sale	Number of shares sold	Sale price per share
November 1975	100	$3.00

Dated : May 1976

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
270 Madison Avenue
New York, N.Y. 10016
532-6860

VERIFICATION

STATE OF VERMONT
COUNTY OF WINDSOR ss:

GARY MICHAEL, being duly sworn, deposes and says that he has read the foregoing Answers to Interrogatories and knows the contents thereof, that the same is true to his own knowledge

except as to matter stated therein to be alleged on information and belief, and as to those matters he believes it to be true.

Gary Michael

Gary Michael

Sworn to before me

this day of May 1976

Notary Public State of New York
Qualified in Erie County
My Commission Expires March 30, 1977

Dec 1 Brownell
Tenbridge Vermont
Comm exp 2/10/79

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE,
etc.

Plaintiffs

against

Civil Action
73 Civil 4133 LFM

TELEPROMPTER CORP. et. al.

Defendants

AFFIDAVIT OF GARY MICHAEL

STATE OF VERMONT
COUNTY OF WINDSOR ss:

GARY MICHAEL, being duly sworn, deposes and says:

I have read the original answers to interrogatories prepared by I.WALTON BADER,Esq. on August 29th,1974 (which I executed, with changes, on September 16th,1974).

The answers prepared by Mr. Bader were, as far as he knew, accurate and I hereby ratify these original answers as originally prepared without corrections.

Prior to August 1974 my address was, as given in the Answers to Interrogatories prepared by Mr. Bader 100 Chalet Village, Stockbridge, Vermont and I did not inform Mr. Bader of the change of address.

The date of purchase of my Teleprompter stock was correctly given by Mr. Bader as April 1,1972 and this corresponds to my letter to him about August 20th,1974. However April 1,1972 was the date I paid for the stock and I actually ordered it on March 10th 1972

Accordingly I state that had Mr. Bader verified the answers to interrogatories that he prepared on August 29th, 1974 these answers would have correctly set forth the facts.

Gary Michael

Gary Michael

Sworn to before me
this 21st day of May 1976

Notary Public
Qualified in Erie County
My Commission Expires March 30, 1977

Dennis C. Brownell
Commissioner of Deeds
Erie Cty 2/10/79

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

HARRY LEWIS et al.,	:	
Plaintiffs,	:	73 Civil 3929 (LFM) 73 Civil 4109
-against-	:	73 Civil 4133 73 Civil 4895
TELEPROMPTER CORP. et al.,	:	73 Civil 3025 74 Civil 3281
Defendants.	:	74 Civil 4341

- -x

RESPONSE OF DEFENDANT TOUCHE ROSS
& CO. TO AFFIDAVIT OF MAY 25, 1976
OF I. WALTON BADER, ESQ.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Freund Lewis & Cohen, attorneys for defendant Touche Ross & Co. ("Touche Ross").

I make this affidavit in response to the affidavit of I. Walton Bader, Esq. dated May 25, 1976, received by us May 26, 1976.

Mr. Bader continues, without leave of Court, to file additional papers on his motions that were argued before the Court on May 7, 1976. If those new papers are to be considered, we request that this affidavit be considered as well.

Mr. Bader's activities emphasize the propriety of our

request that costs, including attorneys' fees, be imposed upon Mr. Bader in connection with this motion (p. 2 of our answering affidavit).

Among other things, we have heretofore pointed out the continuation by Mr. Bader of the making of false statements to the Court of the kind which led Judge Owen to note in his decision that, with respect to Mr. Bader, he was referring the record before him for consideration pursuant to Rule 5(f) of the General Rules of this Court dealing with the disciplining of attorneys. After we had noted the falsity of the statement made by Mr. Bader in his moving affidavit with respect to his non-investigation of the time when mail was delivered to his office (see our answering affidavit, pp. 8-10), Mr. Bader continued making the demonstrably false statement in his affidavit of May [illegible], 1976 (see our response, pp. 2-3, to Mr. Bader's Sur-Rebuttal Affidavit of May 20, 1976).

It also appears that Mr. Bader's notice of motion on this motion was misleading in stating that it was being served on "Defendants' Attorneys" without exception; and that in fact several of defendants' attorneys were never given notice of this motion. In his affidavit of May 20, 1976, Mr. Bader referred to this claim of non-service as "nonsense"; but we have received a copy of a letter purportedly sent by Mr. Bader on May 24, 1976 to some of those defendants' attorneys, stating that he was enclosing his motion papers and inviting them to respond to his motion almost 3 weeks after it had been argued. His letter contained the disingenuous statement that at the time he served

BEST COPY AVAILABLE

his motion papers he was "unaware" that those defendants "might have an interest" in the modification proposed by Mr. Bader in the injunctive provisions of the consolidation order which would permit a lawsuit against those defendants. It may be noted that in his moving affidavit (p. 2) Mr. Bader expressly stated that he was asking the Court to permit suits in the State court "to be instituted against all defendants. . . ." (emphasis added) -- yet he claimed in his letter of May 24, 1976 that he was "unaware" that such defendants "might have an interest" in his motion.

The additional papers submitted by Mr. Bader in connection with his Rule 60(b) motion add nothing thereto. They do not constitute "newly discovered evidence" and cannot, even if accepted on their face, in any way affect the determination of Judge Owen. They are essentially meaningless pieces of paper insofar as this motion is concerned.

Those additional papers consist of (a) two affidavits of Gary Michael ("Michael") sworn to May 21, 1976, and (b) further purported answers by Michael to interrogatories sworn to May 1976, with no date appearing.

One of Michael's affidavits is the same as the affidavit dated May 15, 1976 attached to Mr. Bader's Sur-Rebuttal affidavit of May 20, 1976; and that affidavit of Michael has been commented upon in my affidavit of May 21, 1976, pp. 4-5.

The second affidavit purports to relate to alleged interrogatory answers of his dated September 16, 1971; and attempts to support an argument made by Mr. Bader to the

Court of Appeals for the Second Circuit that he could have verified Michael's answers to the interrogatories on September 5, 1974 because he had the necessary information at that time. The lack of substance to this irrelevant claim is shown at pp. 32-33 of our brief in the Court of Appeals (Exhibit E to our answering affidavit). Further, Michael's affidavit does not support the claim that Mr. Bader had the necessary information on September 5, 1974. The statement in Michael's affidavit that the answers as allegedly prepared by Mr. Bader in August 1974 "correctly set forth the facts" is patently unsupportable because Michael made changes in those answers in order, as he then swore, to make the answers true. Michael's affidavit affirmatively shows that Mr. Bader not only did not have on September 5, 1974 Michael's address at the time but he did not have the alleged date of purchase of Michael's stock (stated by Michael in his purported answers of September 16, 1974 to be March 10, 1972).

The submission of the undated so-called supplemental answers of Michael (allegedly verified sometime in May 1976) is, of course, wholly inconsistent with the claim that he has not been a plaintiff in 73 Civ. 4133 since December 1973.* Those answers have no relevancy to the motion under Rule 60(b). As shown above, they simply reconfirm that Mr. Bader did not have the information necessary to verify Michael's answers on September 5, 1974.

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* The statements in Mr. Bader's affidavit that a reference to "Michael Fagan" in my affidavit of May 21, 1976 instead of to "Mary Michael" "supports" his irrelevant claim that Michael was not a plaintiff in 73 Civ. 4133 after December 1973 is too far-fetched to require further response.

It may, however, be noted that those so-called supplemental answers are themselves suspect. Michael states in those answers that the trade date of his purchase of Teleprompter stock was March 10, 1972 and that the settlement date was April 1, 1972.* I am informed that in March and April 1972 Teleprompter stock was traded on the American Stock Exchange and that the rules of that Exchange provided that the settlement date could be no more than 5 business days after the trade date. If, therefore, Michael purchased his stock (trade date) on March 10, 1972, the settlement date could have been no later than March 17, 1972.

The following should also be noted: In his affidavit of May 21, 1976 (the repeat of his affidavit of May 15, 1976), Michael says that he told Mr. Bader to drop him as a plaintiff in 73 Civ. 4133 because he was a law student and he had been informed that "a prospective member of the Bar should not engage in litigation as a party." Yet in his supplemental answers to interrogatories of May 1976, where he says that he is still a law student, he gives the date of his sale of Teleprompter stock as November 1975. This information was given for the purpose, as stated in Mr. Bader's affidavit of May 25, 1976 (p. 1), to show, in support of the motion to modify the injunctive provisions of the consolidation order, that Michael is "a proper class Representative under New York State Securities Laws." Apparently Michael's scruples about acting as a party plain-

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* This date was selected because it was a date that Mr. Bader purportedly had in August 1974 with respect to Michael's purchase of his stock.

tiff shift to accommodate Mr. Bader's needs of the moment.

Lawrence R. Eno
LAWRENCE R. ENO

Sworn to before me this
27th day of May, 1976.

Marlene Herman
Notary Public

MARLENE HERMAN
NOTARY PUBLIC, State of New York
No. 41-6867365
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 30, 19 78

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

HARRY LEWIS, et al,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al,

Defendants.

73 Civil 3929 (LFM)
73 Civil 4109
73 Civil 4133
73 Civil 4895
73 Civil 3025
73 Civil 3281
73 Civil 4341

----------x

SUPPLEMENTAL AFFIDAVIT OF I. WALTON BADER IN SUPPORT OF MOTION TO VACATE INJUNCTION, ETC.

STATE OF NEW YORK)
) SS.:
COUNTY OF WESTCHESTER)

I. WALTON BADER, being duly sworn, deposes and says:

I am one of the attorneys for the plaintiffs herein and am fully familiar with the facts and circumstances of this action.

The undersigned has previously pointed out to the Court that the membership of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE includes purchasers of TELEPROMPTER stock who purchased the same prior to "the class period", held the stock through "the class period" and subsequently sold the stock at a loss. I further pointed out to the Court that such a party would not have a claim under Section 10.b(5) of the Securities Exchange Act but would have a claim under the New York State Securities Acts.

It has been demonstrated to this Court that a GARY MICHAEL is a member of such class.

It is now submitted to this Court via Further Answers to Interrogatories that another member of the INDEPENDENT INVESTOR

PROTECTIVE LEAGUE, SAUL COHEN, fully falls within the class as defined by the undersigned but does not fall within the class certified by this Court. Hence, it is clear that there are adequate class representatives to permit the institution of State litigation against the defendants herein.

I. Walton Bader

Sworn to before me this
13th day of ~~June~~ July, 1976

ALBERT E. YORKO
Notary Public, State of New York
No. 60-3770305
Qualified in Westchester County
Commission Expires March 30, 19[illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al,

Defendants.
----------x

CIVIL ACTION
73 Civil 4133 LFM

FURTHER ANSWERS TO INTERROGATORIES OF THE DEFENDANT TOUCHE ROSS & CO. (FIRST SET)

SAUL COHEN, a member of the plaintiff, INDEPENDENT INVESTOR PROTECTIVE LEAGUE, submits the following Further Answers to the Interrogatories of the defendant TOUCHE ROSS & COMPANY, as follows:

4. State the names of the members of IIPL who owned any shares of stock of Teleprompter Corp. ("Teleprompter") during any portion of the period of time covered by the complaint.

Answer: Saul Cohen
415 North Lake Street
Gary, Indiana 46403

5. With respect to each member listed in response to interrogatory 4, state (a) (i) the date when such member first purchased shares of stock ("shares") of Teleprompter, (ii) the number of shares purchased on that date, and (iii) the price per share

paid for said shares, (b) (i) the date of each subsequent purchase by such member of shares of Teleprompter, (ii) the number of shares purchased on each such date, and (iii) the price per share paid on each purchase, (c) (i) the date of each sale by such member of shares of Teleprompter, (ii) the number of shares sold on each such date, and (iii) the price per share received on each such sale, (d) the number of shares of Teleprompter presently owned by each such member, and (e) in each instance the name in which the shares were or are held.

Answer: (a) SAUL COHEN purchased 500 shares of the common stock of Teleprompter Corp. on August 25, 1972 at a price of $39.25 per share; (b) SAUL COHEN purchased 500 shares of the common stock of Teleprompter Corp. on January 18, 1973 at a price of $30.00 per share; (c) SAUL COHEN sold 1,000 shares of common stock of Teleprompter Corp. on May 14, 1975 at a price of $6.25 per share.

Yours, etc.,

BADER AND BADER
Attorneys for Plaintiffs
65 Court Street
White Plains, N.Y. 10601

VERIFICATION

STATE OF INDIANA)
) SS.:
COUNTY OF LAKE)

SAUL COHEN, being duly sworn, deposes and says that he is a member of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE; that he has read the foregoing Answers to Interrogatories and knows the contents thereof; that the same are true to his own knowledge except as to matters stated therein to be alleged on information and belief and as to those matter he believes them to be true.

X Saul Cohen
Saul Cohen

Sworn to before me this
17th day of June, 1976

X Bernice Gullic
Bernice Gullic, Notary Public

Commission expires 7-21-76

U.S. DISTRICT COURT
FILED
JUL 29 1976
S.D.N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

HARRY LEWIS et al.,	:	73 Civ. 3929-LFM
		73 Civ. 4109-LFM
Plaintiffs,	:	73 Civ. 4133-LFM
		73 Civ. 4895-LFM
-against-	:	73 Civ. 3025-LFM
		74 Civ. 3281-LFM
TELEPROMPTER CORP. et al.,	:	74 Civ. 4341-LFM
Defendants.	:	MEMORANDUM

----------x

44886

MacMAHON, District Judge.

Plaintiffs Independent Investor Protective League, Michael Fagan, Martin Randolph, Sadie Mosner, Rose L. Gross, G. Dixon Mahon, Robert W. Stoddard, and John C. Bernius move for a modification of the injunctive provisions in this court's order of consolidation of November 15, 1974 so as to permit them to institute class litigation against defendant Touche Ross & Co. in the New York state court. Plaintiffs also move for a determination that my brother, Judge Owen, was without jurisdiction to impose sanctions on Independent Investor Protective League and its attorney, I. Walton Bader, by reason of a stipulation of voluntary dismissal filed in 73 Civ. 4133. In the alternative, plaintiffs move for

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reconsideration of Judge Owen's order based on newly discovered evidence.

Since both issues relating to Judge Owen's order are presently on appeal to the Second Circuit, this court does not have jurisdiction to consider plaintiff's second and third motion. Landman v. Mitchell, 445 F.2d 274 (5th Cir. 1971), cert. denied, 404 U.S. 1022 (1972); Sykes v. United States, 392 F.2d 735, 738 (8th Cir. 1968); Ideal Toy Corp. v. Sayco Doll Corp., 302 F.2d 623, 625 (2d Cir. 1962). We consider, therefore, only plaintiffs' motion to modify the injunctive provisions of our consolidation order.

This is a consolidated class action alleging fraud in the sale of Teleprompter Corp. stock. The liability of Touche Ross is premised on its certification of various financial statements of Teleprompter. In the order of consolidation, we enjoined all present and former stockholders of Teleprompter from commencing or continuing any derivative or representative actions against any of the defendants based upon any of the transactions complained of in the constituent actions. Movants, who now feel that their claim against Touche Ross under Section 10 of the Securities Exchange Act of 19[illegible] will not

succeed, seek to commence a class action in state court against the accountants based on common law theories of negligence and the New York State Securities Acts, and concerning the same transactions involved in the federal suit.

To allow litigation in state court would serve only to further tangle already complex litigation. The federal complaint already alleges common law liability of the accountants, as well as liability under several sections of the Securities Act of 1933 and the Securities Exchange Act of 1934. This court has pendent jurisdiction over any further related state claims.

Accordingly, plaintiffs' motion for modification of our consolidation order, for reconsideration of Judge Owen's order, or a determination that Judge Owen's order was entered without jurisdiction is denied.

So ordered.

Dated: New York, N. Y.
July 29, 1976

LLOYD F. MacMAHON
United States District Judge

ROSENMAN COLIN FREUND LEWIS & COHEN
575 MADISON AVENUE NEW YORK, N.Y. 10022

MAX FRELAND
ABROSE DOBSKOV
SEYMOUR D. LEWIS
LAWRENCE A. ENO
MURRAY COHEN
WILLIAM N. GOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOETZ
SAMUEL H. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MAL L. BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHWALB
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN
ROBERT V. GOTTLIEB
MARK I. FISHER
JOSEPH L. GETRAER
LAWRENCE G. GOLDS
NORMAN J. LITZKOFF

SAMUEL I. ROSENMAN
1896-1973

RALPH F. COLIN
SYDNEY M. KAYE
WALTER J. PETSCHEK
EDWARD F. ROSINY
COUNSEL

TELEPHONE (212) 644-7000
CABLE ROCOKAY NEWYORK
TELECOPIER (212) 644-6949
TELEX 12-5745

WRITER'S DIRECT DIAL NUMBER
644-6900

October 14,

Hon. Lloyd F. MacMahon
United States Courthouse
Foley Square
New York, New York

Re: Lewis v. Teleprompter Corporation
73 Civil 3929 (LFM).

Dear Judge MacMahon:

On October 7, 1976, we received in the mail an affirmation of I. Walton Bader, Esq. dated September 30, 1976. As shown by the attached copy of the envelope in which that affirmation was mailed, we did not receive a copy of that affirmation until the afternoon of October 7, 1976 because Mr. Bader had mailed it with insufficient postage. This has happened in the past, and is a technique employed by Mr. Bader to delay receipt of his papers apparently in the hope that the Court will act before notice is received by his adversary.

The motions to which the affirmation is addressed were denied by your Honor on July 29, 1976. We therefore assume that there is no need for us to respond to the affirmation of September 30, 1976.

Any motion with respect to the proceedings before Hon. Richard Owen, U.S.D.J., in "Independent Investor Protective League et al. v. Teleprompter Corp., et al." (73 Civ. 4133) should be made before Judge Owen. The order of consolidation expressly provides that "The consolidation hereby ordered shall be without prejudice. . . with respect to constituent action bearing number 73 Civ. 4133, to any order that may be

made by Hon. Richard Owen, U.S. D.J., in proceedings pending before him." The proceedings in that action are pending before Judge Owen and any motion affecting them should properly be made before him. Mr. Bader is apparently attempting to by-pass Judge Owen because he is familiar with the facts.

Respectfully yours,

Lawrence R. Eno

LRE/mk
enc.

Lawrence R. Eno

cc: I. Walton Bader, Esq.

Robert M. Kornreich, Esq.
Wolf Popper Ross Wolf & Jones

Martin I. Shelton, Esq.
Chea Gould Climenko Kramer & Casey

Russell E. Brooks, Esq.
Millbank Tweed Hadley & McCloy

David Z. Rosensweig, Esq.
Katz Leavy Rosensweig & Sindle

Bruce S. Kaplan, Esq.
Paul Weiss Rifkind Wharton & Garrison

T. Newman Lawler, Esq.
Hall Dickler Lawler Kent & Howley

Arthur A. Anderson, Esq.
Anderson & Goldman

Robert Werbel, Esq.
Holtzmann Wise & Shepard

BADER AND BADER
65 COURT STREET
WHITE PLAINS, N Y 10601

Mr. Eno

POSTAGE DUE

Rosenman Colin, Esqs.
575 Madison Avenue
New York, N.Y.

POSTAGE DUE

762-a

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ROSENMAN COLIN FREUND LEWIS & COHEN

575 MADISON AVENUE NEW YORK, N.Y. 10022

MAX FREUND
AMBROSE MOSKOW
SEYMOUR LEWIS
LAWRENCE R. FREUND
MURRAY COHEN
WILLIAM W. GOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOETZ
SAMUEL H. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MAX L. BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHNALL
PETER F. NADEL
LEE H. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN
ROBERT W. GOTTLIEB
MARK I. FISHER
JOSEPH L. GETRAER
LAWRENCE G. GOLDE
NORMAN J. ITZKOFF

SAMUEL I. ROSENMAN
1896-1973

RALPH F. COLIN
SYDNEY M. KAYE
WALTER J. PETSCHEK
EDWARD F. ROSINY
COUNSEL

TELEPHONE (212) 644-7000
CABLE ROCOKAY NEWYORK
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TELEX 12-5745

WRITER'S DIRECT DIAL NUMBER
644-6900

October 14, 1976

Hon. Richard Owen
United States Courthouse
Foley Square
New York, New York

Re: Independent Investor Protective League v. Teleprompter Corp. 73 Civil 4133

Dear Judge Owen:

We today received copy of a letter from I. Walton Bader, Esq. addressed to Hon. Lloyd F. MacMahon, U.S.D.J., with a copy being sent to Your Honor. In that letter, Mr. Bader seeks "guidance" as to the Judge before whom certain motions that he contemplates in this proceeding should be brought.

On or about January 21, 1976, Independent Investor Protective League, Martin F. Randolph, Jr. and I. Walton Bader, Esq. appealed to the Court of Appeals from Your Honor's order of January 9, 1976. During the pendency of that appeal, Your Honor had no jurisdiction to complete the proceedings in this matter, which is still pending before you. On September 17, 1976, the appeal was dismissed by the Court of Appeals since the matter is still pending before you, but we have not yet received a copy of the mandate.

Mr. Bader, while the appeal was pending, made certain motions with relation to this proceeding and made them returnable before Judge MacMahon. Judge MacMahon denied those motions on July 29, 1976. According to Mr. Bader's letter of

October 13, 1976, he intends to renew those motions. In our papers before Judge MacMahon on the prior motion and in a letter to Judge MacMahon dated October 12, 1976, we expressed our view that the motions Mr. Bader contemplates making can only properly be made before Your Honor. A copy of our letter of October 12, 1976 to Judge MacMahon is attached hereto.

Respectfully yours,

Lawrence R. Eno

LRE/mk
enc.

Lawrence R. Eno

cc: Hon. Lloyd F. MacMahon
I. Walton Bader, Esq.

AREA CODE 212
LEXINGTON 2-6860

765

CABLE ADDRESS: "BAPATENTS" NEW YORK
TELEX: BABKLN 666244 UW

LAW OFFICES
BADER AND BADER
65 COURT STREET
WHITE PLAINS, N. Y. 10601

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER
BENEDICT BADER (MASS. BAR)

REPRESENTED IN WASHINGTON, D. C.

October 16th, 1976

Re: Lewis vs. Teleprompter Civil Action 73 Civil 3929
(Independent Investor Protective League vs.
Teleprompter 73 Civil 4133)

Hon. Richard Owen
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, N.Y. 10007

Dear Judge Owen,

The undersigned has received a copy of the letter addressed to Your Honor by counsel for Touche Ross which is being replied hereto.

In view of the fact that Judge MacMahon denied certain motions addressed to him which involved Rule 60(b) reconsideration of Your Honor's prior determination in this case the undersigned believes that the motion for leave to renew these motions must be addressed to Judge MacMahon. However, in view of the procedural problems involved in this case the undersigned thought it best to address a communication to both Judges for guidance. Judge Mac Mahon denied the portion of the motion seeking Rule 60(b) reconsideration in view of the pendency of the appeal on July 29, 1976 and for no other reason.

In addition, it may be inappropriate for Your Honor to be involved in further proceedings in this case in view of the decision of the Court of Appeals in Continental Vending vs. James Talcott, Inc. (Decided September 22, 1976, New York Law Journal October 8th, 1976.)

Furthermore, at the present time, nunc pro tunc Powers of Attorney are on file in favor of the undersigned by the said MARTIN RANDOLPH and by the INDEPENDENT INVESTOR PROTECTIVE LEAGUE. In view of the fact that, pursuant to these Powers of

Attorney, the undersigned had the authority to sign Interrogatory Answers himself the date of receipt of the answers from the other parties is immaterial.

Finally, of course, Rule 61 FRCP was apparently not considered by Your Honor in the original determination made by the Court. This Rule provides, in pertinent part, as follows:

> "* * * The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial right of the parties." (emphasis supplied).

There is, in addition, the jurisdictional question raised by the Court of Appeals in its opinion in this case dismissing the attempted appeal taken herein as premature.

All of these questions, including the conduct of the attorney for Touche Ross, will be raised by subsequent motions as soon as the proper Judge before whom these motions are to be made has been determined.

IWB/iwb
cc: All counsel

Respectfully,

I.Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS

Plaintiff

73 Civil 3929 LFM

against

TELEPROMPTER CORP et. al.

Defendants

MEMORANDUM TO THE CLERK OF THIS COURT

Please file the within Power of Attorney in the file of this action.

Dated : October 15th, 1976

Yours, etc.

BADER and BADER
Attorneys for parties IIPL et al.
65 Court Street
White Plains NY 10601

CERTIFICATE OF SERVICE

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York hereby states under penatties of perjury that on October 15th, 1976 he served a copy of the foregoing document upon all attorneys for the parties herein.

Notice: The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned.

Know All Men by These Presents, *which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:*

That I MARTIN F. RANDOLPH, JR. of 1602 Pacific Beach Drive, San Diego Cali
(insert name and address of the principal)

do hereby appoint I. WALTON BADER of 270 Madison Avenue, New York NY 10016 92109
(insert name and address of the agent, or each agent, if more than one is designated)

of 270 Madison Avenue, New York, N.Y. nunc pro tunc as of September 1st, 1974.

my attorney(s)-in-fact TO ACT

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally". Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

First: in my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

[Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (K), inclusive, shall automatically constitute an elimination also of subdivision (L).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

~~(A) real estate transactions~~ [illegible]
~~(B) chattel and goods transactions~~ [illegible]
~~(C) bond, share and commodity transactions~~ [illegible]
~~(D) banking transactions~~ [illegible]
~~(E) business operating transactions~~ [illegible]
~~(F) insurance transactions~~ [illegible]
~~(G) estate transactions~~ [illegible]
(H) claims and litigation; [ ]
~~(I) personal relationships and affairs~~ [illegible]
~~(J) benefits from military service~~ [illegible]
~~(K) records, reports and statements~~ [illegible]
~~(L) all other matters~~ [illegible]

[Specific provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.]

Second: with full and unqualified authority to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select.

Third: This power of attorney shall not be affected by the subsequent disability or incompetence of the principal.

Fourth: To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof by operation of law or otherwise shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

In Witness Whereof, *I have hereunto signed my name and affixed my seal this* .....

day of October 14, 1976

Nunc pro tunc as of September 1, 1974 Martin F. Randolph, Jr. (Seal)
(Signature of Principal)
Martin F. Randolph, Jr.

STATE OF CALIFORNIA *COUNTY OF* *ss.:*

On the 14th *day of* October 1976 *before me personally came*

Martin F. Randolph, Jr.

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Susan Cenni Cutting
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARTIN F. RANDOLPH, JR.

TO

I. WALTON BADER

Power of Attorney

Statutory Short Form

Nunc pro tunc

Dated, September 1st, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS

Plaintiff 73 Civil 3929

against

TELEPROMPTER CORP. et. al.

Defendants

NOTICE OF FILING OF POWER OF ATTORNEY

NOTICE IS HEREBY GIVEN that the within Power of Attorney is being filed with the Clerk of this Court.

Dated : October 16th, 1976

yours, etc.

BADER and BADER
Attorneys for IIPL et. al.
65 Court Street
White Plains New York 1060

AFFIRMATION OF SERVICE

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York, hereby states under penalties of perjury that on October 16th, 1976 he served a copy of the foregoing document by mail upon all attorneys for the parties herein.

Dated : October 16th, 1976

I.Walton Bader

Notice The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned.

Know All Men by These Presents, *which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:*

That we, INDEPENDENT INVESTOR PROTECTIVE LEAGUE, an unincorporated association of 19 West 24th Street, New York NY
(insert name and address of the principal)

do hereby appoint I, WALTON BADER of Beech Tree Road, Brookfield Center Conn.
(insert name and address of the agent, or each agent, if more than one is designated)

my attorney(s)-in-fact TO ACT

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally". Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

First: in my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

[Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (K), inclusive, shall automatically constitute an elimination also of subdivision (L).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

~~(A) real estate transactions~~ ..... [ ]
~~(B) chattel and goods transactions~~ ..... [ ]
~~(C) bond, share and commodity transactions~~ ..... [ ]
~~(D) banking transactions~~ ..... [ ]
~~(E) business operating transactions~~ ..... [ ]
~~(F) insurance transactions~~ ..... [ ]
~~(G) estate transactions~~ ..... [ ]
(H) claims and litigation; ..... [ ]
~~(I) personal relationships and affairs~~ ..... [ ]
~~(J) benefits from military service~~ ..... [ ]
~~(K) records, reports and statements~~ ..... [ ]
~~(L) all other matters~~ ..... [ ]

[Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements

Second: with full and unqualified authority to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select.

Third: This power of attorney shall not be affected by the subsequent disability or incompetence of the principal.

Fourth: To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof by operation of law or otherwise shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

In Witness Whereof, *I have hereunto signed my name and affixed my seal this* 14th *day of* October, *19*76

Nunc pro tunc as of September 1, 1974 *(Seal)*

(Signature of Principal)

INDEPENDENT INVESTOR PROTECTIVE LEAGUE

by Merrill Sands

Merrill Sands *ss.:* Secretary

STATE OF FLORIDA *COUNTY OF* DADE

On the 14th *day of* October *19* 76 *before me personally came* MERRILL SANDS to me known to be the Secretary of INDEPENDENT INVESTOR PROTECTIVE LEAGUE, an unincorporated association and known to me to be the individual *described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.*

STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JAN. 26, 1979
BONDED THRU GENERAL INSURANCE UNDERWRITERS

Notary Public

SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE

TO

I. WALTON BADER

Power of Attorney

Statutory Short Form

Dated, October 14th, *19*76

Nunc pro tunc as of September 1, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS

Plaintiff

Civil Action
73 Civil 3929

against

TELEPROMPTER CORP. et. al.

Defendants

MOTION TO DISMISS RULE 37 PROCEEDINGS IN CONSTITUTENT ACTION 73 Civil 4133LFM OR, IN THE ALTERNATIVE, GRANTING RULE 60(b) RECONSIDERATION DISMISSING PENDING RULE 37 PROCEEDINGS, OR, IN THE ALTERNATIVE, UNDER THE INHERENT POWER OF THIS COURT SEALING ALL PROCEEDINGS IN THIS ACTION UNTIL FINAL APPELLATE RESOLUTION THEREOF.

SIRS:

PLEASE TAKE NOTICE that pursuant to the applicable Rules as set forth herein, and upon the annexed affirmation of I.WALTON BADER, dated October 22nd, 1976 and the exhibits annexed hereto, the undersigned will move this Court, before the Honorable Lloyd F. Mac Mahon, United States District Judge, at a Stated Term thereof, to be held at the Courthouse, Foley Square, New York, N.Y. 10007 on Friday November 12th, 1976 at 2:15 PM in the afternoon, said Motion to be submitted to the said District Judge unless said Judge, in his discretion, requires argument thereupon, for the following relief:

1. Granting leave to the plaintiffs HIPL, RANDOLPH, MICHAEL FAGAN to renew the portion of the motion heretofore made before Judge MacMahon to award the following relief, based upon the decision of the Court of Appeals which dismissed the pending appeal taken by the plaintiffs above-named as follows:

a. Pursuant to Rule 12(b) FRCP and Rule 41 FRCP dismissing the pending Rule 37 proceedings against the parties above-named upon the ground that the Court has no jurisdiction over the parties, their attorney, or the subject matter of this action.

b. In the event that the relief sought pursuant to paragraph "a" above is not granted then, pursuant to Rule 60(b) FRCP vacating the prior Order of this Court dated January 9, 1976 and determining that the prior Order of this Court relating to service and filing of further answers to interrogatories was fully complied with.

c. Considering the conduct of the attorney for the defendant LAWRENCE R. ENO in this matter and taking such action with respect thereto as may be justified under the circumstances.

2. Pursuant to the inherent Power of the Court, and, in particular, as set forth by the Court of Appeals for the Third Circuit in Lowenschuss vs. West Publishing Company, --Fed(2nd) --- [No. 75-2431(decided September 16th, 1976)] sealing the record of these proceedings until all Appellate consideration thereof shall

have been concluded.

3. Granting to the parties above-named such other, further and different relief as this Court may deem just and proper.

Dated : October 23rd, 1976

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
IIPL, RANDOLPH and MICHAEL FAGAN
65 Court Street
White Plains N.Y.
Telephone (212) 532-6860

TO: ROSENMAN COLIN, etc.
Attorneys for Defendant TOUCHE ROSS
575 Madison Avenue
New York, N.Y. 10022

All other counsel

AFFIRMATION OF SERVICE

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

I.WALTON BADER, a member of the Bar of the State of New York, hereby states under penalties of perjury that on October 26 1976 he served a copy of the foregoing Motion upon ROSENMAN, COLIN, etc., 575 Madison Avenue, New York, N.Y. 10022 and a copy of said papers upon all other counsel in this case by mail.

Dated : October 23rd, 1976

I.Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS

Plaintiff

against 73 Civil 3979 LFM

TELEPROMPTER CORPORATION et. al.

Defendants

MOVING AFFIRMATION

STATE OF NEW YORK
ss:
COUNTY OF NEW YORK

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document has the force of an affidavit under the laws of the State of New York.

I am one of the attorneys for the plaintiffs INDEPENDENT INVESTOR PROTECTIVE LEAGUE, (an unincorporated association), MARTIN F. RANDOLPH,Jr., and MICHAEL FAGAN. I also have represented, in the past in this case, GARY MICHAEL who ceased to be a plaintiff in this case upon the filing by the undersigned of an Amended Complaint pursuant to the order of Judge Griesa of this Court. However, if GARY MICHAEL is deemed to be a plaintiff in this case the undersigned continues to represent him.

Heretofore the undersigned moved this Court for various types of relief in connection with this action, and in particular, in connection with a certain Order and Opin on i sued out of this Court (Owen,J.) on January 9,1976.

On July 29th, 1976 Judge MacMahon of this Court denied the motions made by the undersigned in toto. However, with respect to the portion of the motion relating to the January 9th, 1976 order of Judge Owen Judge MacMahon held that the motion could not be considered by him since the Court of Appeals had this matter sub judice before it. On September 17th, 1976 the Court of Appeals, in a written opinion, dismissed the appeal upon the ground that it had been taken from a non-final order. In its opinion , however, the Court of Appeals expressed serious reservations as to the jurisdiction of the Court to conduct Rule 37 proceedings since Notices of Voluntary Dismissal of this action had been filed pursuant to Rule 41(a).

Thus the basis for the decision of Judge MacMahon to deny the motion involved has now disappeared. Since the Court of Appeals decided this matter only on September 17th, 1976 and the mandate had been held up because of a costs dispute, this motion is being made at the earliest possible moment.

In addition to the fact that the Notices of Voluntary Dismissal in this case were "so ordered" by District Judge MacMahon and that, in addition, the "Class Aspect" of this action was still continuing despite dismissal as to the parties represented by the undersigned because there were other Class Representatives still in existence in the consolidated action, there is another reason why this Court has no further jurisdiction over either the parties or the subject matter of this action. This results in the fact that, even if dismissal was not proper under Rule 41(a), it was proper under the other portions of Rule 41 as constituting, in effect, a

dismissal by stipulation. The conduct of the parties indicates this as will be set forth in this affirmation infra. Only the attorneys for the defendant Touche Ross (Lawrence R. Eno, Esq) contends that this action is viable as to the parties represented by the undersigned. If, however, Mr. Eno's position is correct then his conduct has been in clear violation of the Rules of this Court in his failure to serve copies of documents in the consolidated action upon the undersigned. Annexed to this affirmation is a letter of October 16th, 1976 addressed to Mr. Eno which has been unanswered. This letter points out at least four (4) documents which were not served upon the undersigned in connection with this action.

This failure is very serious since the documents involved relate to the application made by lead counsel in this case (Mr. Jones) for Class Certification of claims and which was subsequently granted by Your Honor(with an injunctive provision against other actions by any other party also involved therein).

If, in fact, the discontinuance was recognized by counsel for Touche Ross, (as it was by the other counsel in this case) then there could be no criticism of the conduct of such counsel. However, having taken the position before this Court and before the Court of Appeals that, in fact, the action involved was not discontinued by the plaintiffs moving herein, counsel for Touche Ross had the obligation to serve copies of all papers in the consolidated action upon the undersigned. Having failed to carry out this obligation such counsel has wilfully violated the Rules of this Court, to the prejudice of the plaintiffs moving herein and thus is subject to disciplinary action pursuant to

Rule 5(f) of the General Rules of the United States District Court for the Southern and Eastern Districts of New York.

In addition the conduct of the attorney for Touche Ross had caused severe prejudice to the plaintiffs involved in this motion. The Class certified by the Court is, it is submitted, too narrow to fully protect the plaintiffs represented by the undersigned. Had the undersigned been advised of the pendency of the Motion for Class Determination by counsel, the undersigned would have submitted to the Court that a broader Class should have been certified in this action. This is particularly important in view of the determination made by Judge MacMahon that the injunctive provisions of the Order of this Court, barring action to be taken in behalf of any class by any of the parties or their attorneys, applied to the undersigned and to his clients. The undersigned does not contest this determination by Judge MacMahon but merely calls the Court's attention to it to indicate the prejudice that the plaintiffs represented by the undersigned have suffered in this lawsuit by reason of the failure on the part of the attorney for Touche Ross to carry out the Rules. The expenses to the clients of the undersigned, by reason thereof, may amount to $50,000.00.

As a result, it is submitted, that in addition to the grant of this motion, this Court, pursuant to item 1(c) of the Motion made herein, should consider the award of attorneys' fees and expenses to the undersigned and his clients against the attorney for Touche Ross and against Touche Ross itself.

There is a further matter that should also be considered by the Court in this matter. The actions taken in this

case by the defendant Touche Ross and its attorney have, it is submitted, been performed maliciously and without warrant. It is admitted by the defendant Touche Ross in the record of this matter that, with respect to the alleged irregularity on the part of the undersigned in submitting interrogatory answers, that the said defendant Touche Ross suffered no prejudice thereby. The action taken herein, it is submitted, was motivated by the fact that the undersigned is involved in two major actions against the defendant Touche Ross relating to its accounting practices in connection with the Giant Stores audits, which suits are by private clients (non class claims) and amount to approximately $7,000,000. The malicious practices involved herein were further motivated, it is submitted, by the fact that complaints made to the United States Securities and Exchange Commission resulted in the Commission's institution of Administrative Disciplinary Proceedings against the defendant Touche Ross (which the said defendant is attempting to enjoin in this Court in a proceeding pending before Judge Metzner).

In any event, however, it is clear that the conduct of the attorney for the defendant Touche Ross in this action with respect to failure to serve papers on the undersigned constitutes, in effect, a recognition of the dismissal of this action under Rule 41 with respect to the undersigned's clients and this fact causes any further proceedings in this suit with respect to the clients of the undersigned to be beyond the Court's jurisdiction.

In making this presentation to the Court the undersigned wishes to make it clear that, with respect to all other counsel for the parties in this case (including plaintiffs lead counsel appointed by this Court) there is no criticism made of their

conduct. The sole criticism relates to the conduct of the attorney for Touche Ross. All other counsel have acted in the highest standard of members of the Bar of this Court. Lead counsel (Mr. Jones) quite properly removed the names of the plaintiffs represented by the undersigned from his Consolidated Complaint since, in his opinion, these plaintiffs had been dropped from this action. The counsel representing the other defendants also, quite properly, assumed that these plaintiffs had been dropped from this action.

Counsel for Touche Ross may take the position that, since there was a Rule 37 motion to dismiss these plaintiffs from this action pending at the time that other actions were taken, that he had no obligation to serve papers on the undersigned until the Rule 37 proceedings were concluded. He may also take the position that, since the Court on January 9th, 1976 dismissed this action with prejudice with respect to the parties IIPL that there was no obligation to serve papers on the undersigned. This, of course, is not correct. Until Judge Owen made his determination to dismiss the Complaint against the plaintiff IIPL this plaintiff was a party to this litigation and was entitled, as of right, to receive all papers involved in the consolidated action. Also, in view of the decision of the Court of Appeals to the effect that Judge Owen's order is probably not reviewably at an Appellate Level until final determination of this litigation the undersigned is entitled, as of right to receive copies of all papers involved herein if the attorney for Touche Ross is serious in his contention that this action is still pending with respect to the parties represented by

the undersigned.

A determination by this Court, under Rule 12, that this Court has no jurisdiction of this action as prayed for herein, will, of course, terminate this action in behalf of the parties represented by the undersigned and will dispose of this matter for all time. However, if the Court does not grant this relief, then, it is submitted, the portion of the Motion herein seeking Rule 60(b) relief and an order vacating the Order and Opinion of Judge Owen issued January 9th, 1976 should, it is submitted, be issued.

At the outset, of course, the law is normally clear that an application to vacate an Order issued by another Judge, and based upon the same evidence adduced before such other Judge, must be referred to such other Judge for his determination. This rule, it is submitted, does not apply in this case and Judge MacMahon is, it is submitted, the proper Judge before whom to bring this application.

Since Judge MacMahon took it upon himself to deny the prior application submitted to him by the undersigned (upon the technical ground that the Court of Appeals had jurisdiction of this matter) it is obvious that, under the single judge assignment rules of this Court, Judge MacMahon has control of this case and any application must be made to him. Also, since this application is based on new evidence (rather than upon the evidence originally adduced before Judge Owen) the matter can be considered by Judge MacMahon. The application is similar to that for vacating an

injunction issued by another Judge and this type of application is routinely made in Courts of the United States.

In addition, in this case, Judge Owen may be legally disqualified to act. The Court placed its notes into the record of this action and, in addition, the Court, in its opinion of January 9th, 1976, set forth certain claimed "testimony" given by the undersigned before him, at a hearing of September 20th, 1974 at which there is no stenographic record. The Court's notes are not completely intelligible and there is a serious dispute as to the contents of these notes. One of the important disputes is whether the Court's notes reveal that the undersigned, in his presentation to the Court on September 20th, 1974, stated that Mr. Sands was in his office on September 9th, 1974.

Thus, in effect, Judge Owen is required to be a witness in a case and is thus legally disqualified pursuant to 28 USC 455 and Federal Rules of Evidence Rule 605. (see also In Re Continental Vending Machine Corp., 2 Cir., Mansfield J., (decided September 22nd, 1976, NY Law Journal October 8th, 1976 first page). In that case Judge Mishler, who was not legally disqualified in the matter, was told by the Court that, in order to insure fairness, it might be advisable for him to disqualify himself.

We now come to the portion of the motion seeking Rule 60(b) relief. The new evidence involved was not presented at the original proceedings before Judge Owen because the undersigned was unaware of the scope of the proceedings before Judge Owen. The original notice of the hearing involved and the statement made by

counsel for Touche Ross at the commencement of the hearings related merely to the receipt by the undersigned of interrogatory answers on the part of the plaintiff RANDOLPH. The time of receipt during the day involved did not seem to be material since the Post Office Department had confirmed the transmission times. When, on January 9th, 1976 the Court questioned the time of receipt of the papers in the office of the undersigned it was then necessary to clarify the record by means of an affidavit of the mail carrier (LA PORTA). This affidavit clearly shows that the time discrepancy is explained by the fact that the answers involved were delivered to the office receptionist in the undersigned's office who had poor eyesight and therefore it was not physically placed on the undersigned's desk until later in the day.

The Court also seemed to question the receipt of the answers of the plaintiff MICHAEL FAGAN. The FAGAN affidavit now shows that these answers were signed prior to September 5th, 1974 under oath and therefore, with respect to these answers, due and timely service was made.

The record also shows that GARY MICHAEL was not a plaintiff in this action on September 5th, 1976 and therefore had no obligation to answer interrogatories.

In addition to clearing up the record other factors are now present. Both the plaintiff IIPL and the plaintiff RANDOLPH have signed Powers of Attorney authorizing the undersigned, nunc pro tunc to sign interrogatory answers for them. MICHAEL FAGAN has submitted nunc pro tunc answers to interrogatories which are fully in accord with the answers originally submitted by the undersigned on September 5th, 1974. GARY MICHAEL has confirmed the fact that he

was not a plaintiff in this action on September 5th, 1976 but also has confirmed the fact that he ratified the answers submitted in his behalf by the undersigned on September 5th, 1974.

Accordingly there is no question in this case that the Order of the District Court relative to the filing of Answers to Interrogatories was fully complied with and, as a result, the action taken by the District Court in granting Rule 37 relief to the defendant Touche Ross should be vacated.

This action also would result in a determination that the opposition to the Motion made by the attorneys for Touche Ross would be substantially justified and would warrant the award of attorneys' fees to the plaintiffs pursuant to Rule 37 FRCP.

The undersigned also moves the Court for an Order sealing the records of these proceedings until all Appellate Proceedings are completed herein. The motion states that the attorney for the defendant Touche Ross has been guilty of misconduct in this case and suggests the institution of disciplinary action against him. The Court has made a finding, which is believed to be unsupported, to the effect that the undersigned has been guilty of misconduct.

It is submitted that any such finding, prior to Appellate Resolution of this case, is unfair to the attorneys involved. As indicated by the annexed portion of the Lowenschuss opinion such sealing of the record before this Court is thus amply justified.

WHEREFORE the undersigned prays that this motion be in all respects granted.

Dated : October 22nd, 1976

I.Walton Bader

* * * *

[Exhibits A through L to the preceding Moving Affirmation are not reproduced here. Other copies of some of the same documents appear elsewhere in this Appendix, as follows:

Exhibit A	-	Excerpt from opinion of the Third Circuit in Lowenschuss v. West Publishing Co.	Not in Appendix
Exhibit B	-	Opinion of Second Circuit on first appeal	Not in Appendix
Exhibit C	-	Letter from I. Walton Bader to Lawrence R. Eno dated October 16, 1976	Not in Appendix
Exhibit D	-	Power of attorney	pp. 901-903
Exhibit E	-	Power of attorney	pp. 848-849
Exhibit F	-	Further Answers to the First Interrogatories of the Defendant, Touche, Ross & Company, by Plaintiff, Michael Fagan	pp. 728-730
Exhibit G	-	Affidavit of Gary Michael	pp. 727 726
Exhibit H	-	Affidavit of Gary Michael	pp. 740-741
Exhibit I	-	Supplemental Answers to Interrogatories of Defendant Touche Ross & Company	pp. 742-744

Exhibit J	-	Letter from I. Walton Bader to Michael Fagan and Gary Michael	pp.469
Exhibit K	-	Affidavit of Michael Fagan	pp.685-696
Exhibit L	-	Affidavit of Vincent J. LaPorta	p.671].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS et al., Plaintiffs	73 Civil 3929(LFM)
against	
TELEPROMPTER CORP. et al., Defendants	

ANSWERING AFFIDAVIT ON BEHALF OF TOUCHE ROSS & CO. IN OPPOSITION TO MOTIONS RELATING TO THE ORDER DATED JANUARY 9, 1976 OF HON. RICHARD OWEN, U.S.D.J., IN 73 CIV. 4133

State of New York)
: ss.:
County of New York)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Freund Lewis & Cohen, attorneys for defendant Touche Ross & Co. ("Touche Ross"). I make this affidavit in opposition to the motions purportedly made on behalf of "plaintiffs IIPL, Randolph [and] Michael Fagan" by notice of motion dated October 23, 1976, served by mail on October 26, 1976.

One portion of the motion is for leave to renew the following motions purportedly heretofore made before Hon. Lloyd F. MacMahon, U.S.D.J.: (a) pursuant to Fed. R. Civ. P. 12(b) and 41 to dismiss "the pending Rule 37 proceedings" before Hon. Richard Owen, U.S.D.J., in the action entitled Independent Investor Protective League, et al. v. Teleprompter Corporation, et al. (73 Civ. 4133) on the ground of lack of jurisdiction; (b) in the alternative, pursuant to

Fed. R. Civ. P. 60(b), to vacate an order dated January 9, 1976 of Judge Owen in 73 Civ. 4133, and to determine that an order of Judge Owen dated August 16, 1974 in 73 Civ. 4133 "was fully complied with"; and (c) to consider "the conduct of the attorney for the defendant Lawrence R. Eno in this matter and taking such action with respect thereto as may be justified under the circumstances."

A copy of Judge MacMahon's decision and order denying the prior motions is annexed hereto as Exhibit A.

Although the aforesaid motions are made as motions for leave to renew the motions heretofore denied by Judge MacMahon,* we consider them on the merits to show (a) that leave to renew should not be granted, or (b) if granted, that the motions should be denied.

Another portion of the present motion is to seal the record in this case on the ground, as set forth in movants' memorandum of law (p. 12), that the record "involves criticism of the conduct of both attorneys representing the parties herein" and the record should be sealed "to protect the reputation of both attorneys involved." The motion is thus made "to protect the reputation" o your deponent, against whom movants' counsel, I. Walton Bader, Esq., has made, and apparently intends to continue to make, charges. We reject any attempt to seal the record "to protect the reputation" of your deponent. We discuss this more fully at p. 25 <u>infra</u>.

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* The portion of the motion designated as (c) <u>supra</u> was not heretofore made.

Since these motions primarily concern an order of Judge Owen, and proceedings presently pending before him, they should properly be considered by Judge Owen. United States v. Fluor Corporation, 436 F.2d 383, 385 (2d Cir. 1970), cert. den. 402 U.S. 945 (1971); In re Hines, 88 F.2d 423, 425 (2d Cir. 1937); Dictograph Products Company v. Sonotone Corporation, 230 F.2d 131, 135 (2d Cir. 1956); United States v. Cavell, 164 F. Supp. 957, 959 (W.D. Pa. 1958). The suggestion in the moving affirmation (p. 8) that Judge Owen "may be legally disqualified to act" because in his decision and order of January 9, 1976 he made findings as to what occurred before him on oral argument on September 20, 1974 although no stenographic transcript of those proceedings had been made, and because certain notes of his were used in the evidentiary hearing before him, is without merit. The lack of substance to this contention is fully set forth in Touche Ross' brief on the appeal taken from Judge Owen's order of January 9, 1976 to the Court of Appeals for the Second Circuit (copy annexed hereto as Exhibit F) at p. 45.

Nevertheless, we invite this Court's consideration of the matter referred to at p. 12 infra which relates to further proceedings by Judge Owen pursuant to his order of January 9, 1976.

PRIOR PROCEEDINGS

The facts in this case are fully set forth in Touche Ross' brief in the Court of Appeals (Exhibit F annexed) at pp. 3-24, and will not be repeated here. In brief (reference being made to Exhibit F for greater details):

On September 26, 1973, the action of "Independent Investor Protective League et al. v. Teleprompter Corporation et al." (73 Civ. 4133) was begun. The action is a class action on behalf of stockholders of Teleprompter Corporation brought by four plaintiffs [namely, Independent Investor Protective League ("IIPL"), Martin F. Randolph, Jr. ("Randolph"), Michael Fagan ("Fagan") and Gary Michael ("Michael")], against Teleprompter Corporation, Touche Ross and other defendants alleging violations of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Plaintiffs other than IIPL having failed for a period of more than 8 months to answer certain interrogatories and IIPL, after the lapse of more than 8 months, having served manifestly insufficient and unresponsive answers, Touche Ross on August 2, 1974 moved, pursuant to Fed. R. Civ. P. 37(a), for an order compelling answers. On August 16, 1974, Judge Owen, to whom the case had been assigned, granted the motion in its entirety and directed that answers be served within 20 days. The 20 days expired on September 5, 1974.

On September 6, 1974, under postmarks of September 5, 1974, Touche Ross' counsel received in the mail from plaintiffs' counsel, I. Walton Bader, Esq., unconformed copies of what purported to be the answers of the several plaintiffs. Judge Owen later found that, when the purported copies were mailed on September 5, 1974, the original answers of plaintiffs Randolph, Fagan and Michael had not been received by Mr. Bader and that there was no credible evidence that the IIPL answers had been timely executed and served.

After various efforts by Mr. Bader to conceal the fact that original answers had not been received when the copies were mailed (more fully detailed in Exhibit F annexed at pp. 5-8), Touche Ross, on September 13, 1974, moved pursuant to Fed. R. Civ. P. 37(b) and (d) to dismiss the action as to it and to require the payment to Touche Ross of its expenses, including attorneys' fees.

Touche Ross' motion was heard by Judge Owen on September 20, 1974. An evidentiary hearing was directed by Judge Owen, and the hearing was fixed for October 11, 1974 (later adjourned at Mr. Bader's request to November 4, 1974).

On October 9, 1974, in a letter to Judge Owen, Mr. Bader stated that he felt it "appropriate" to file a notice of voluntary dismissal under Fed. R. Civ. P. 41(a)(1) as to Randolph. Although no order of consolidation of 73 Civ. 4133 with other actions had yet been entered, this notice came before Judge MacMahon and was "So ordered" by him on October 15, 1974. A copy of that notice is annexed hereto as Exhibit B.

As appears from Exhibit B annexed, no provision was made in the typewritten service copy of the notice for the signature of any Judge and Touche Ross had no prior knowledge that the notice would be signed by any Judge. If a Rule 41(a)(1) notice of voluntary dismissal is validly filed, it is effective upon filing with the clerk of the Court without Court approval (see Touche Ross' brief in the Court of Appeals, Exhibit F annexed, p. 38).*

* After learning that Judge MacMahon had signed that notice, we addressed a letter to Judge MacMahon under date of January 30, 1975 (copy annexed as Exhibit C) bringing the circumstances to his attention.

It appears that on or about October 28, 1974, an attorney named Arthur Kass, Esq. of Croton Falls, New York (apparently acting for Mr. Bader) proceeded to file a notice of voluntary dismissal in 73 Civ. 4133 under Rule 41(a)(1) on behalf of IIPL, Fagan and Michael in similar form. This notice was not "So ordered" by Judge MacMahon until January 23, 1976. A copy of that notice is annexed hereto as Exhibit D.

The evidentiary hearing proceeded before Judge Owen on November 4, 13 and 14, 1974.

On November 18, 1974, Judge MacMahon signed an order consolidating 73 Civ. 4133 with other similar actions. However, the order of consolidation expressly provided that "The consolidation hereby ordered shall be without prejudice . . . with respect to constituent action bearing number 73 Civ. 4133, to any order that may be made by Hon. Richard Owen, U.S.D.J., in proceedings pending before him."

On January 9, 1976, Judge Owen rendered his decision and order. A copy thereof is annexed hereto as Exhibit E.

In that decision and order, Judge Owen granted Touche Ross' motion. Judge Owen concluded on the basis of all the evidence that on September 5, 1974 Mr. Bader (despite his denials) had himself mailed the unconformed copies of all the answers to Touche Ross' counsel, and that his purpose was to have that firm believe that all the original answers had been received by him, when in fact they had not been, and that they were due and timely served in accordance with

the Court's order on the very last day for such service; and that he thereafter sought to lead Touche Ross' counsel to believe that such was in fact the case.

Judge Owen further found that when Mr. Bader was finally compelled, under threat of Court action, to reveal that he did not have all the originals, he and his client, IIPL, through its official, one Sands (who turned out to be Mr. Bader's brother-in-law), collaborated to create a "concocted story" and that they both "made false statements and gave false testimony pursuant to an evolving plan to first deceive counsel and later the Court as to the circumstances surrounding the mailing of the purported 'answers' to interrogatories . . . on September 5, 1974." The details in that regard are fully set forth in Exhibit F annexed, at pp. 3-24.

Judge Owen dismissed the action with prejudice as to Touche Ross and directed that Touche Ross' expenses, including attorneys' fees, be paid by IIPL and Mr. Bader. The amount of those expenses has not yet been fixed and those proceedings are pending before Judge Owen.

Judge Owen also stated that, with respect to Mr. Bader, "conduct such as that engaged in" by him "cannot and will not be countenanced by the Court", and that he was therefore "referring this record for further consideration pursuant to Rule 5(f) of the General Rules of this Court providing for the disciplining of attorneys."

On January 23, 1976, IIPL, Randolph and Mr. Bader filed a notice of appeal from Judge Owen's order to the Court

of Appeals for the Second Circuit. As before noted, a copy of Touche Ross' brief on that appeal is annexed hereto as Exhibit F. On or about September 17, 1976, the Court of Appeals rendered its decision dismissing the appeal as taken from a non-final order. The decision of the Court of Appeals is annexed hereto as Exhibit G. The mandate was filed in the District Court on October 26, 1976.

THE MOTION TO "DISMISS THE PENDING RULE 37 PROCEEDINGS"

We know of no Rule providing for a motion to dismiss a "Rule 37 proceeding" [such "proceeding" being consideration of a motion to dismiss an action under Fed. R. Civ. P. 37(b) and (d)]*. It is uncertain what is sought to be embraced within the motion: whether it is sought to vacate Judge Owen's order of January 9, 1976 or to enjoin Judge Owen from proceeding to implement that order by fixing the amount of the monetary sanctions to be paid, or both. If it is intended to vacate the order of January 9, 1976, it must fail if for no other reason than that Judge Owen had jurisdiction to enter the order. If it is intended to prevent Judge Owen from further proceeding, that clearly may not be done by a Judge of coordinate jurisdiction and movants are following an improper procedure.

The motion, however considered, is based on the conten-

* Fed. R. Civ. P. 12(b), under which the motion is purportedly brought, is applicable only to dismiss a claim for relief in a pleading and motions thereunder must be made before making a responsive pleading. Fed. R. Civ. P. 41, another Rule cited, deals in subdivision (a)(2) with dismissals of "an action" and in subdivision (b) with motions by a defendant for dismissal of "an action or of any claim against him."

tion that Judge Owen lost jurisdiction with the filing of one or another of the aforementioned notices of voluntary dismissal under Fed. R. Civ. P. 41(a)(1). This subject is dealt with in part in Touche Ross' brief in the Court of Appeals (Exhibit F annexed) pp. 37-39 and also in the accompanying memorandum of law.

The analysis there made, and also as set forth below, shows that Judge Owen had jurisdiction to enter his order of January 9, 1976.

It also appears that Judge Owen has jurisdiction to proceed to fix the amount of the sanctions that he imposed on January 9, 1976 but that a cloud on his right so to proceed exists by virtue of Judge MacMahon's signature on January 23, 1976 to the Rule 41(a)(1) notice of voluntary dismissal as to IIPL, Fagan and Michael (Exhibit D annexed) (see p. 25 <u>infra</u>).

As demonstrated in Touche Ross' brief in the Court of Appeals and in the accompanying memorandum of law, since 73 Civ. 4133 is a class action, the right to dismiss the action voluntarily is not governed by Rule 41(a)(1) but by Fed. R. Civ. P. 23(e) which provides that "A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs."

As noted in the aforesaid brief and memorandum, Rule 41(a)(1) expressly provides that it is "Subject to the provisions of Rule 23(e)"; and the authorities and cases make

clear that in a class action there can be no Rule 41(a)(1) voluntary dismissal even though there has been no class certification when the voluntary dismissal is filed. The Rule 41(a)(1) voluntary dismissals could not therefore effectively be filed in this action.

It is thus clear that, were it not for the addition to the notices of the words "So ordered" and the signature of Judge MacMahon, the Rule 41(a)(1) notices of voluntary dismissal would be nullities. We now consider the effect of Judge MacMahon's signature to the notices.

In footnote 2 to its opinion dismissing the appeal in this case (Exhibit G annexed), the Court of Appeals confirmed the ineffectiveness of the Rule 41(a)(1) voluntary dismissals to deprive the Court of jurisdiction absent Judge MacMahon's signature -- indeed, citing an additional case to that effect not cited in Touche Ross' brief [namely, Kahan v. Rosenstiel, 424 F.2d 161, 169 (3d Cir. 1970), cert. den. 398 U.S. 950 (1970)].

The Court of Appeals stated, however, that "it is by no means clear" that, with Judge MacMahon's signature, the Rule 41(a)(1) voluntary dismissals could be deemed to have no effect even though they might be erroneous. Touche Ross contended, on the basis of Hyde Construction Company v. Koehring Company, 388 F.2d 501, 508 (10th Cir. 1968), cert. den. 391 U.S. 905 (1968), that if the Rule 41(a)(1) notices of voluntary dismissal were not validly filed, the signature of the Court could not endow them with validity. The Court of Appeals suggested that Hyde Construction might not be con-

trolling until the invalidity of the notices had actually been judicially determined.

Nevertheless, it is clear that the Rule 41(a)(1) notices of voluntary dismissal, even with Judge MacMahon's signature, did not deprive Judge Owen of jurisdiction to enter his order of January 9, 1976. Thus:

The purported Rule 41(a)(1) voluntary dismissal as to Randolph (Exhibit B annexed), signed by Judge MacMahon on October 15, 1974, did not purport to terminate the action. Indeed, the notice expressly stated that it was filed on behalf of Randolph only and that the action continued as a class action. Jurisdiction of the Court over the action thus expressly continued.*

The purported Rule 41(a)(1) voluntary dismissal as to IIPL, Fagan and Michael (Exhibit D annexed) had no effect, for reasons that have been discussed, at least until "So ordered" by Judge MacMahon on January 23, 1976. That was <u>after</u> Judge Owen had entered his order of January 9, 1976.** It is thus clear that Judge Owen had jurisdiction to enter

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* It may also be noted that that notice was not only improperly filed for reasons discussed above, but the Court of Appeals suggested that it might be ineffective because there was a "substantial question" whether a Rule 41(a)(1) notice of voluntary dismissal could properly be filed as to one party rather than to terminate the entire action, citing <u>Harvey Aluminum, Inc</u>. v. <u>American Cyanamid Co</u>., 203 F.2d 105 (2d Cir. 1953), <u>cert</u>. <u>den</u>. 345 U.S. 964 (1953).

** It may also be noted that prior to the time that Judge MacMahon signed that notice, Touche Ross had, on February 4, 1975, filed an answer to the amended complaint in 73 Civ. 4133 (and had filed an answer to the consolidated complaint on February 18, 1975). A Rule 41(a)(1) notice of voluntary dismissal can only be filed before answer or a motion for summary judgment, and if Judge MacMahon's signature would otherwise have given validity to the notice, the answer was filed before that occurred.

his order of January 9, 1976, which occurred before Judge MacMahon "So ordered" the notice on January 23, 1976.

With respect to Judge Owen's power now to proceed to impose the sanctions provided for in his order of January 9, 1976, as the Court of Appeals indicated, if it is judicially determined, as we contend, that the Rule 41(a)(1) notices of voluntary dismissal were not validly filed, then, under the Hyde Construction case, supra, Judge Owen would not have been ousted of jurisdiction by Judge MacMahon's signature on January 23, 1976. Nevertheless, the presence of Judge MacMahon's signature casts a cloud on Judge Owen's ability to proceed now to fix the amount of the sanctions provided for in his order of January 9, 1976.

On the argument before Judge MacMahon on May 7, 1976 of Mr. Bader's prior motion, when these circumstances were brought to Judge MacMahon's attention, he stated that he had signed the notices without consideration of their validity and with no intention to deprive Judge Owen of jurisdiction; and that he was willing to take appropriate action in that regard. At that time, no action was taken since the appeal was pending.

We therefore respectfully suggest that, if Judge MacMahon now deems it appropriate, he may, on his own initiative, direct the removal of his signature from the aforesaid notices.

THE MOTION TO VACATE JUDGE OWEN'S ORDER OF JANUARY 9, 1976 ON THE GROUND OF "NEWLY DISCOVERED EVIDENCE"

This motion is made pursuant to Fed. R. Civ. P. 60(b)

on the ground of "newly discovered evidence."

There is no substance to this motion.

As shown in the accompanying memorandum of law, for "newly discovered evidence" to be cognizable it must be credible, of such a material and controlling nature as will probably change the outcome and must be such as could not by the exercise of diligence have been discovered in time to present in the original proceeding.

The purportedly "newly discovered evidence" here is not newly discovered and is essentially meaningless in nature.

(A) The affidavit of Vincent La Porta

The irrelevance of this affidavit is shown in Touche Ross' brief in the Court of Appeals (Exhibit F annexed), p. 13 footnote.

In the proceeding before Judge Owen, there was an issue as to the time of the day when the last delivery of mail was made to Mr. Bader's office on September 5, 1974.

Mr. Bader claimed that the Randolph answers arrived in the last mail delivery on September 5, 1974, that that last delivery of mail to his office took place at about 3:30 P.M., that on September 5, 1974 he had left his office prior to that time and did not see the Randolph answers, but that they were found later that day by the aforesaid Sands (his brother-in-law) who mailed out the copies. The records of the United States Postal Service showed, however, that the last delivery of mail to Mr. Bader's office that day took place not at about 3:30 P.M. but between 1:30 P.M. and 1:45 P.M.

They also showed that the last delivery of mail to Mr. Bader's office on September 5, 1974 was made by Vincent La Porta. His affidavit now presented, dated February 10, 1976, simply states, and confirms, that he made the last delivery of mail on September 5, 1974 to Mr. Bader's office and that he left the mail, according to his normal practice, with the secretary to one of the men in the office who was the office receptionist. He says nothing as to the time of day the delivery was made.

Mr. La Porta's affidavit thus does not challenge, or even deal with, the issue before Judge Owen, namely, the time of the day when that last delivery was made; it makes no reference to that subject. All it says is that when Mr. La Porta made the last delivery on September 5, 1974, he left it, as he normally did, with the person who was the office receptionist.

Mr. La Porta's affidavit is presented as though it solved some great mystery about a "time discrepancy", while in fact it has nothing wnatever to do with the matter. It has no effect whatsoever on Judge Owen's findings or order. Judge Owen found that the Randolph answers did not arrive on September 5, 1974 and that Mr. Bader had himself mailed out the copies that day. Mr. La Porta's affidavit in no way shows that the Randolph answers arrived on September 5, 1974.

Mr. Bader speculates that after the office receptionist received the last mail delivery, she did not put it on his

"desk" until later that day.* His point apparently is that perhaps the Randolph answers came in the last mail, before he allegedly left his office, but he did not see them for this reason. This is not "newly discovered evidence." At the hearing before Judge Owen, Mr. Bader stated and his secretary testified that the office mail was delivered at the front desk, as Mr. La Porta's affidavit confirms. Mr. Bader thus at all times knew -- on September 5, 1974 and at the hearings before Judge Owen -- that the mail had been handed by the mailman to the office receptionist. If he claimed that the receptionist did not deliver it to him, Mr. Bader had full opportunity to bring that out in the hearings before Judge Owen. There is, of course, not a shred of evidence to support Mr. Bader's speculation. Moreover, Judge Owen did not find that Mr. Bader <u>ever</u> left his office on September 5, 1974 and rejected the tale told by Mr. Bader and Sands as a "concocted story". As noted, Judge Owen found that Mr. Bader had himself mailed the purported copies on September 5, 1974 even though he had not received the originals.

Even if Mr. La Porta's affidavit had some relevance, it may be noted that he was known at the hearings before Judge Owen in November 1974 to have been the person who made the last delivery of mail to Mr. Bader's office on September 5,

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* On the prior motion before Judge MacMahon, Mr. Bader said that he "suspect[ed]" that the office receptionist failed to put it in "the file box for the papers belonging to the undersigned"; and in an affirmation in the Court of Appeals dated March 25, 1976, Mr. Bader said it was "entirely conceivable" that she did not put it in his "mail compartment".

1974. An employee of the Postal Service so testified, and documents bearing Mr. La Porta's name and social security number were marked as exhibits. Mr. La Porta was available to Mr. Bader during the hearings* and at all times since the hearings in November 1974. Mr. Bader submitted other evidentiary papers to Judge Owen weeks after the formal hearings closed, yet apparently he did not attempt to contact Mr. La Porta until February 1976.

In an attempted explanation of this, Mr. Bader states that at the hearing before Judge Owen "the time of receipt during the day involved did not seem to be material" and did not "seem to be material" until Judge Owen rendered his decision on January 9, 1976. Of course, as shown, Mr. La Porta's affidavit of February 10, 1976 does not even concern the time of the day the mail was delivered to Mr. Bader's office.

However, Mr. Bader knew during the hearings that the time of the day when mail was delivered to his office was in issue, and he questioned the Postal Service employee who testified on that very matter. For example, he put the following question to that employee:

> "Q So that therefore what would be the last possible time that he [Mr. La Porta] could have made that delivery in your opinion?
>
> A 1.30, 1.45.
>
> MR. BADER: 1.30, 1.45. Thank you.

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* Mr. La Porta was identified at a hearing on November 4, 1974. Further hearings were held on November 13 and 14, 1974.

No further questions." (matter in brackets added)*

The fact is that Mr. Bader knew even before the hearings commenced that the time of the day when mail was delivered to his office was in issue and he then investigated the matter. On September 27, 1974, Mr. Bader wrote to the Post Office asking it to "confirm" that mail deliveries were made to his office "at about 6:30 AM, 10:00 AM and 3:00 PM"; and on October 16, 1974 the Post Office replied that his office was "scheduled for delivery between 7:45 to 9:30 AM, 10:30 AM to 12:30 PM and 1:15 PM to 2:30 PM". Copies of those letters are attached as Exhibits H and I, respectively.

It is clear that the La Porta affidavit is simply a "red herring".

(B) The Affidavit of Michael Fagan

The irrelevance of this affidavit is shown in Touche Ross' brief in the Court of Appeals (Exhibit F annexed), pp. 24-25.

In his affirmation, Mr. Bader states that "The Court also seemed to question the receipt of the answers of the plaintiff Michael Fagan". The fact is that Mr. Bader admitted that on September 5, 1974, when a purported copy

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* If additional proof is needed that Mr. Bader was then aware that the time of the day mail was delivered to his office was in issue, see Judge Owen's opinion (Exhibit E annexed, pp. 11-12, especially footnote 11) and Touche Ross' brief in the Court of Appeals (Exhibit F annexed), especially pp. 10-11, 13, 15-16.

thereof was mailed to Touche Ross' counsel, he had not received the original of Fagan's answers [see also Judge Owen's decision (Exhibit E annexed), p. 16].

Mr. Bader now presents an affidavit of Fagan dated March 22, 1976, the gist of which is (a) that about August 30, 1974, Fagan signed his answers and mailed them to Mr. Bader but somehow, mysteriously, those answers were never received by Mr. Bader; (b) that about September 10, 1974 Mr. Bader sent a letter to Fagan stating that the answers had not been received and asking for their return but somehow, mysteriously, that letter was never received by Fagan, and (c) that somehow, in the more than 1-1/3 years that had elapsed since the formal hearing before Judge Owen closed and in the more than 1 year since the final papers were filed, Mr. Bader never found out that his client Fagan had mailed the answers and Fagan similarly never found out that the answers had not been received. In an affirmation in the Court of Appeals dated March 25, 1976, Mr. Bader stated that he had just ascertained these matters "after unexpectedly contacting" Fagan with respect to the then-pending appeal from Judge Owen's order.

Even if one were to credit the Fagan affidavit, it simply further confirms that on September 5, 1974 Mr. Bader did not have Fagan's answers (and, indeed, had no knowledge of their status) when the copy of Fagan's answers was mailed to Touche Ross' counsel for the purpose, as Judge Owen found, of having that firm believe that the original answers had been received by Mr. Bader and that due and timely service was being made.

Nor does the Fagan affidavit even qualify as "newly discovered evidence". Fagan was at all times available to Mr. Bader and Mr. Bader could have ascertained those alleged "facts" and brought them to the attention of Judge Owen before the hearings were held in November 1974, during the hearings, and indeed, thereafter before the decision.

Mr. Bader also presents alleged "further answers" to interrogatories by Fagan purportedly verified May 13, 1976 "Nunc Pro Tunc as of August 30, 1974" and signed by Mr. Bader "Nunc Pro Tunc as of August 29, 1974". Since Fagan never before served any answers to interrogatories, it is difficult to understand their designation as "further answers". We do not think we need further comment on purported answers served at least more than 20 months after they were required to be served under Court order and at least more than 4 months after the action was dismissed as to Touche Ross for failure to comply with such Court order.

(C) The Affidavits of Gary Michael

On the appeal from Judge Owen's order of January 9, 1976, Mr. Bader for the first time claimed that, because he had in January 1974 omitted Michael's name from the caption of the amended complaint, Michael was not from that time a plaintiff in the action; and that therefore he was not subject to Judge Owen's order of August 16, 1974 with respect to service of answers to interrogatories and the mailing of a purported copy of Michael's answers on September 5, 1974 to deceive Touche Ross' counsel should be disregarded. This is obviously not "newly discovered evidence".

In attempted explanation of this belated after-thought, Mr. Bader told the Court of Appeals that, although he was the one who had dropped Michael as a party, he "was not aware of this heretofore because of the coincidence in the names of Gary Michael and Michael Fagan". In other words, that although Mr. Bader was the man who allegedly eliminated Michael as a plaintiff, he was unaware that he had done so.

Even if the claim that Michael had been eliminated as a plaintiff were supportable, that could not be a reason to vacate Judge Owen's order of January 9, 1976. The claim, however, cannot be supported, and this is fully demonstrated in Touche Ross' brief in the Court of Appeals (Exhibit F annexed), pp. 29-31. Indeed, Mr. Bader presented to Judge Owen answers of Michael dated September 16, 1974 in which Michael referred to himself as "Plaintiff Gary Michael", thus proclaiming that he was still a plaintiff and Mr. Bader, by signing those answers, endorsed that proclamation.

Mr. Bader now presents two affidavits of Michael, one dated May 15, 1976 and the other dated May 21, 1976. Neither of them has any relevance.

In the affidavit of May 15, 1976, Michael states that he told Mr. Bader in December 1973 to drop him from the action as a named plaintiff. As shown in Touche Ross' brief in the Court of Appeals, supra, even if Michael had this conversation with Mr. Bader in December 1973, Michael remained a named plaintiff after December 1973 and was treated as such by Mr. Bader and others.

It may also be noted that neither Michael nor Mr. Bader ever claimed before May 1976 to have had this conversation, and their actions were inconsistent with that claim, as shown in Touche Ross' brief in the Court of Appeals, supra. Indeed, as already noted, when Mr. Bader filed his brief in the Court of Appeals in March 1976, he told the Court that he "was not aware . . . heretofore" that Michael had been dropped as a plaintiff, as he would have been had he had that conversation with Michael.

Michael's second affidavit, dated May 21, 1976, purports to relate to Michael's aforesaid interrogatory answers of September 16, 1974. Although Michael made changes in those answers as sent to him by Mr. Bader in order, as he then swore, to make the answers true, he now says that the answers as sent to him by Mr. Bader "correctly set forth the facts" and that he ratifies them "as originally prepared without corrections" -- a position that is patently unsupportable.

In the answers sent to Michael by Mr. Bader, Mr. Bader set forth the date of Michael's purchase of Teleprompter stock as April 1, 1972 and Michael changed that to March 10, 1972. Michael now submits so-called "supplemental answers" dated on some unspecified day in May 1976 -- an action inconsistent with his claim that he has not been a plaintiff since December 1973. In those so-called "supplemental answers", and in his affidavit of May 21, 1976, Michael says that March 10, 1972 was the trade date of his purchase and April 1, 1972 was the settlement date. This attempt to give some validity to Mr. Bader's use of the date April 1,

1972 is highly suspect: I am informed that in March and April 1972 Teleprompter stock was traded on the American Stock Exchange and that the rules of that Exchange provided that the settlement date could be no more than 5 business days after the trade date. Therefore, if Michael's trade date was March 10, 1972, the settlement date could have been no later than March 17, 1972.

While we have analyzed this material to show its lack of substance, all of it is plainly immaterial, none of it is "newly discovered evidence" and none of it can possibly affect Judge Owen's determination.

(D) The Purported Powers of Attorney to Mr. Bader from Randolph and IIPL

Mr. Bader also presents a purported "Power of Attorney" to himself from Randolph dated "October 14, 1976 Nunc pro tunc as of September 1, 1974" which Mr. Bader says authorizes him to sign interrogatory answers for Randolph. This is apparently intended somehow to cure the mailing of a copy of Randolph's answers on September 5, 1974 when, as Judge Owen found, the original had not been received by Mr. Bader.* Not only is the document obviously completely ineffective for such purpose, but the order of Judge Owen of August 16, 1974 required that each plaintiff respond separately under oath; and that is the requirement of Fed. R. Civ. P. 33(a), an attorney's verification being insufficient [see Touche

* Apparently for the same purpose Mr. Bader presents the same form of power of attorney from IIPL to Mr. Bader dated the "14th day of October, 1976 Nunc pro tunc as of September 1, 1974."

Ross' brief in the Court of Appeals (Exhibit F annexed) p. 32]. Mr. Bader by this means cannot change the requirements of the order and the Rules -- and, indeed, the power of attorney itself states that it applies only "to the extent that I [Randolph] am permitted by law to act through an agent" (matter in brackets added).

This matter too is plainly irrelevant and can have no effect on Judge Owen's order.

The motion to vacate Judge Owen's order on the ground of "newly discovered evidence" should accordingly be denied.

THE ALLEGED MISCONDUCT OF TOUCHE ROSS' COUNSEL

The charges contained in Mr. Bader's affirmation against Touche Ross' counsel are that they failed to serve him, as attorney for the plaintiffs in 73 Civ. 4133, with copies of papers filed by Touche Ross in the consolidated action.* From this Mr. Bader concludes that either (a) Touche Ross' counsel impliedly agreed that the Rule 41(a)(1) notices of voluntary dismissal were effective and so did not serve him, or (b) if they did not so agree (and we did not and do not, and have made that clear ever since the notices were filed), then Touche Ross' counsel "wilfully" violated the Rules of

* Mr. Bader has been served with copies of all papers relating to 73 Civ. 4133 and the proceedings before Judge Owen. The papers Mr. Bader is referring to are listed in his letter dated October 16, 1976 annexed to his affirmation as Exhibit C.

this Court in failing to serve Mr. Bader with copies of such papers and should be punished therefor.

There is no substance to Mr. Bader's observations.

The order of consolidation of November 18, 1974 expressly provides that lead counsel (Wolf Popper Ross Wolf & Jones) "shall be in charge of the entire conduct of the consolidated action on behalf of all plaintiffs herein" and that lead counsel shall receive service of all papers by defendants. Mr. Bader knows this because that order was included by him in the Appendix filed on the appeal from Judge Owen's order and was referred to by him on his prior motion before Judge MacMahon.

Accordingly, as provided in the consolidation order, Touche Ross' papers in the consolidated action have been served on lead counsel and not on the several attorneys for individual plaintiffs. We are informed and believe that other defendants' counsel, whose conduct Mr. Bader praises, have done likewise. The conduct of Touche Ross' counsel was thus proper and no inference can be drawn from our failure to serve Mr. Bader individually.

Mr. Bader also states that Touche Ross and its counsel acted in this case "maliciously and without warrant" because Mr. Bader is "involved" in two actions against Touche Ross in connection with "Giant Stores" and that "complaints" to the Securities & Exchange Commission led to action by that body against Touche Ross. This irrelevant claim is not the fact. Touche Ross' Rule 37(b) and (d) motion was

dictated by the facts in 73 Civ. 4133, and that there was "warrant" for that motion is fully demonstrated by Judge Owen's decision and order (Exhibit E annexed).

THE MOTION TO SEAL THE RECORD

If this motion to seal the record involved only Mr. Bader, we would not be disposed to oppose it, even though it comes too late. It should have been made as soon as Mr. Bader knew that his conduct was in question (which was in September 1974, before the hearings before Judge Owen) or certainly not later than the time when Judge Owen rendered his decision in January 1976. Now, by virtue of Mr. Bader's appeal to the Court of Appeals, the matter is of record there and the decision of the Court of Appeals is published. It appears futile to try to seal the record in this Court at this time.

Moreover, the motion does not only concern Mr. Bader. Mr. Bader has made, and circulated, charges against Touche Ross' counsel in his prior papers and in his affirmation and memorandum on this motion, and apparently intends to continue to make such charges. To seal the record now would make it appear that there was substance to those charges whereas they are in fact baseless. Our conduct having been publicly called into question by Mr. Bader, we have a right to have his charges publicly aired to show their lack of substance and not to have Mr. Bader give them an aura of authenticity by shrouding them in secrecy.

CONCLUSION

For the foregoing reasons, the motions should be denied.

Lawrence R. Eno

Sworn to before me this
8th day of November, 1976.

Marlene Herman
Notary Public

MARLENE HERMAN
NOTARY PUBLIC, State of New York
No. 41-0367365
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 19 78

* * * *

[Exhibits A through I to the preceding Answering Affidavit on Behalf of Touche Ross are not reproduced here. Other copies of some of the same documents appear elsewhere in the Appendix, as follows:

Exhibit A -	Order of Judge MacMahon Dated July 29, 1976	pp. 758-760
Exhibit B -	Order and Notice of Voluntary Dismissal Pursuant to Rule 41(a)(1)(i) of Plaintiff Martin F. Randolph, Jr., Only	P 594--596
Exhibit C -	Letter from Lawrence R. Eno to Judge MacMahon Dated January 30, 1975	pp 628--629
Exhibit D -	Order and Notice of Voluntary Dismissal Relating to Plaintiffs Independent Investor Protective League, Michael and Fagan Dated October 28, 1974	pp. 602
Exhibit E -	Opinion and Order of Judge Owen dated January 9, 1976	pp. A-25 to A-42
Exhibit F -	Brief of Defendant-Appellee Touche Ross & Co. on Prior Appeal	Not in Appendix
Exhibit G -	Opinion of Second Circuit Court of Appeals on Prior Appeal	Not in Appendix

Exhibit H - Letter from I. Walton Bader to Postal Information pp. 226

Exhibit I - Letter from Postmaster to I. Walton Bader pp. 227].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et. al.

Plaintiffs

against

Civil Action
73 Civil 3929 LFM

TELEPROMPTER CORP. et. al.

Defendants

REPLYING AFFIRMATION IN SUPPORT
OF MOTION TO DISMISS RULE 37
PROCEEDINGS AND FOR FURTHER RELIEF
IN CONSTITUENT ACTION 73 Civil 4133

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, being duly sworn, deposes and says:

I am a member of the Bar of the State of New York and make the statements set forth in this affirmation under penalties of perjury. This document has the force of an affidavit under the laws of the State of New York.

The opposing papers submitted by counsel for the defendant TOUCHE ROSS [opposing papers having not been submitted in behalf of any other party, either plaintiff or defendant] clearly indicate that the said defendant TOUCHE ROSS has not addressed itself to the real issues in this motion. These issues are as follows in the undersigned's opinion.

1. Is the conduct of the attorney for the defendant TOUCHE ROSS [occurring subsequent to the making of the motion under Rule 37 before Judge Owen] such as to preclude this

party from obtaining any Rule 37 relief [even if, under the original state of facts, it might be entitled to such relief].

2. Does the conduct of the attorney for the defendant TOUCHE ROSS clearly indicate an intent to agree with the voluntary discontinuance filed by the plaintiffs in constituent action 73 Civil 4133.

3. Was, if fact, this action voluntarily discontinued.

4. Do that uncontroverted facts, which were brought to the attention of the Court subsequent to the making of the Rule 37 Order involved herein, warrant Rule 60(b) relief.

The attorney for the defendant TOUCHE ROSS admits that papers in connection with this action, including opposition to motions for Class Determination were not served upon the undersigned. He claims that this was in accordance with the consolidation order entered by the Court (opy annexed hereto). In the first place, of course, the consolidated complaint prepared by lead counsel dropped the plaintiffs in constituent action 73 Civil 4133. This was done quite properly by lead counsel because of the filing by the plaintiffs in 73 Civil 4133 of Notices of Voluntary Dismissal. Thus, by failing to serve papers upon the undersigned subsequent to the filing of the consolidated complaint counsel for TOUCHE ROSS recognized the Notices of Voluntary Dismissal of the plaintiffs in 73 Civil 4133 and therefore cannot properly claim that these notices were "nullities". However counsel for TOUCHE ROSS went further. He violated the order of Judge MacMahon by serving a separate Answer

the Amended Complaint previously filed by plaintiffs in constituent action 73 Civil 4133. Thus, by the conduct of the attorney for the defendant TOUCHE ROSS, he either (1) recognized the discontinuances filed by the plaintiffs in 73 Civil 4133 or (2) was guilty of clear misconduct in failure to serve counsel in 73 Civil 4133 with all further papers in this action. He cannot "blow hot and cold".

Rule 37, in setting forth the basis for attorney's fee awards under Rule 37 provides that the Court will not grant such fees if:

> "* * *other circumstances make an award of expenses unjust * * *"

It is respectfully submitted that, under the facts of the present case, the uncontroverted circumstances clearly make an award of expenses unjust and, of course, these circumstances occurred subsequent to the proceedings before Judge Owen.

The failure of the attorney for the defendant TOUCHE ROSS to serve papers on the undersigned severely prejudiced his clients. In this connection the Court is advised that there is no criticism of the conduct of plaintiffs' lead counsel. He acted with full propriety and correctly. The attempt on the part of counsel for TOUCHE ROSS to impliedly criticize lead counsel appointed by this court is improper.

However, assuming that the position of TOUCHE ROSS' attorney was correct, and this Class Action was still pending with respect to the parties in 73 Civil 4133, then it was vitally important to provide the Court with information with respect to the Class to be eventually certified. Thus, particularly with respect

to the injunctive provisions of the Order of the District Court, it was important to advise the Court that a broader class, incorporating State Law Claims [including violations of the New York State Securities Acts] should have been interposed in this action. The failure of the attorney for the defendant TOUCHE ROSS to serve any subsequent papers on the undersigned in this consolidated action (other than an Answer to the Amended Complaint in 73 Civil 4133, which, of course, was in violation of Judge MacMahon's order) constituted severe prejudice on the undersigned's clients and was a wilful violation of the Rules of this Court. Such wilful violation, in any event, coupled with the violation of Judge MacMahon's consolidation order, warrants this Court, in any event, refusing Rule 37 expenses to this party.

We now come to the question as to whether, under the uncontroverted facts, the evidence now submitted to this Court shows compliance with Judge Owen's original discovery order. (Obviously, if the order was, in fact, complied with there cannot be any Rule 37 sanctions imposed upon the parties or their attorney in 73 Civil 4133.

It is uncontroverted that copies of proposed answers were duly served upon the attorneys for the defendant TOUCHE ROSS on September 5th, 1974. This date was in full compliance with the Order of the Court. [In actuality, the service was made in error by one MERRILL SANDS during the undersigned's absence from the office, but there is no question that the papers were sent]. ON THAT DATE WITHOUT CONTRADICTION, THE PLAINTIFFS RANDOLPH AND MICHAEL FAGAN DULY VERIFIED THEIR ANSWERS TO THESE INTERROGATORIES. Thus the

failure to serve actual verified copies of interrogatories is a mere "irregularity" and would not justify any relief under Rule 37 since there was compliance with the order involved. NO EVIDENCE HAS BEEN SUBMITTED BY THE ATTOREYS FOR THE DEFENDANT TOUCHE ROSS THAT ANY PREJUDICE HAS BEEN SUFFERED BY THEIR CLIENT BY REASON OF THIS IRREGULARITY. However, in order to insure that compliance was had with the Order of the Court, Powers of Attorney "nunc pro tunc" were filed by the plaintiffs INDEPENDENT INVESTOR PROTECTIVE LEAGUE and RANDOLPH. In addition MICHAEL FAGAN submitted duly verified copies of his original answers, identical in all respects to those originall served, which have been filed with this Court.

With respect to the party GARY MICHAEL the record shows that he was not a plaintiff at the time of the entry of the original order requiring further answers to interrogatories from him. However, in order to regularize this situation (assuming that he was, in fact, a plaintiff at the time), he has submitted affidavits ratifying the answers served by plaintiffs' attorney on September 5th, 1974. Thus, with respect to this situation, there has been clear compliance with the Order of the Court and Rule 60(b) relief should be granted to the plaintiffs in 73 Civil 4133.

Finally it is to be noted that this Court has denied the application of the undersigned to vacate the injunction entered by this Court in this action against State Law Claims and has stated, in the Court's opinion, that State Law Claims are included in this action. Under State Law Rules the facts in the present case would not even warrant any relief. Under Erie RR Co. vs. Tompkins, under these facts, in the case at Bar the Court is required to apply

State Law Rules.

WHEREFORE the undersigned prays that this motion be in all respects granted.

Dated : November 10th, 1976

I. Walton Bader

I.Walton Bader

* * * *

[The copy of the text of the order of consolidation dated November 18, 1974, which accompanied the preceding Replying Affirmation, is not reproduced here. Another copy of the order of consolidation appears in this Appendix at pages 605-610 above].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS et al.,

Plaintiffs

against

TELEPROMPTER CORP. et al.,

Defendants

73 Civil 3929(LFM)

REBUTTAL AFFIDAVIT ON BEHALF OF TOUCHE ROSS & CO. IN OPPOSITION TO MOTIONS RELATING TO THE ORDER DATED JANUARY 9, 1976 OF HON. RICHARD OWEN, U.S.D.J., IN 73 CIV. 4133

State of New York)
: ss.:
County of New York)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I submit this affidavit in response to the "Replying Affirmation" of I. Walton Bader, Esq. dated November 10, 1976, served by mail on November 11, 1976 and received the afternoon of November 12, 1976.

The statements of Mr. Bader have in the main been previously answered in Touche Ross' prior papers, and we therefore submit only the following brief comments:

1. Mr. Bader now asserts that Touche Ross' counsel violated the consolidation order by filing an answer to the amended complaint in 73 Civ. 4133 on February 4, 1975. There is nothing in the consolidation order that prohibited the filing of that answer, particularly in view of the

continuance of the 73 Civ. 4133 proceedings by the express terms of the consolidation order. Mr. Bader at all times knew that the answer had been filed, and his present charge of "misconduct" is a belated after-thought suggested by our notation in the answering affidavit (p. 11 footnote) that such answer had been filed.

2. Mr. Bader states that our answering affidavit "impliedly critize[s]" lead counsel in the consolidated action. There is no criticism of lead counsel of any kind in that affidavit. Lead counsel has informed us that they have been unable to find any criticism of them in that affidavit.

3. Mr. Bader's statement that it is "uncontroverted" that copies of interrogatory answers were "duly served" on September 5, 1974 is almost ludicrous in light of Judge Owen's findings (see, e.g., Exhibit E, pp. 15-17, to Touche Ross' answering affidavit). It is also inconsistent with Mr. Bader's position before Judge Owen that the copies had been mailed on September 5, 1974 by "inadvertence" by some one other than Mr. Bader (see, e.g., Exhibit E supra, pp. 10, 13-15). Judge Owen found that Mr. Bader had himself mailed the copies when he had no right to do so in order to mislead.

4. Mr. Bader's suggestion that New York State cases (which in any event are inapposite) control service of interrogatories in this Court is shown to be without substance in Touche Ross' brief in the Court of Appeals (Exhibit F to Touche Ross' answering affidavit, p. 31 footnote, p. 32).

We believe that all other matters referred to in the "Replying Affirmation" are adequately dealt with in Touche Ross' answering affidavit. For example, Mr. Bader's claim that "without contradiction" Fagan "duly verified" his answers before September 5, 1974 is there shown (pp. 17-19) to be not only irrelevant but incredible -- and the only "answers" of Fagan are dated May 13, 1976.

Lawrence R. Eno

Sworn to before me this
17th day of November, 1976

Sarah Gershenoff

SARAH GERSHENOFF
NOTARY PUBLIC, State of New York
No. 24-4622818
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et. al.

Plaintiffs

Civil Action
73 Civil 3929 LFM

against

TELEPROMPTER CORP. et. al.

Defendants

SUR-REBUTTAL AFFIRMATION OF I. WALTON BADER WITH RESPECT TO CERTAIN MATTERS TRANSPIRING ON ARGUMENT OF APPLICATION BEFORE JUDGE MAC MAHON ON NOVEMBER 19th, 1976

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury. This document has the force of an affidavit under the laws of the State of New York.

I am one of the attorneys for the plaintiffs IIPL, RANDOLPH and MICHAEL FAGAN and am fully familiar with the facts and circumstances of this action. I also represent GARY MICHAEL who I contend is not a plaintiff in this case.

At the outset I point out that no opposition to this motion has been filed either by lead counsel for the plaintiffs (Mr. Jones) in the consolidated action or by any of the defendants other than the defendant TOUCHE ROSS. Hence, it is submitted, that with respect to all defendants, other than TOUCHE ROSS, this motion

should be forthwith granted.

The attorney for the defendant TOUCHE ROSS (Mr. Eno), on the argument of this motion, reiterated a statement contained in his affidavit of November 8th, 1976 reading as follows:

> "* * * On the argument before Judge MacMahon on May 7, 1976 of Mr. Bader's prior motion, when these circumstances were brought to Judge MacMahon's attention, he stated that he had signed the notices without consideration of their validity and with no intention to deprive Judge Owen of jurisdiction; and that he was willing to take appropriate action in that regard. * * *"(emphasis supplied)

The same affidavit also states:

> " * * * At that time, no action was taken since the appeal was pending* * *"

At the outset, the undersigned submits that it is most unfair to quote a Judge's remarks made from the Bench which are not embraced in a stenographic record. I, myself, do not recall such remarks being made by Judge MacMahon. The Court did comment upon the fact that he "so ordered" the notices of voluntary dismissal; according to my recollection but since I took no notes, I do not recall the precise remarks made by the Court.

In view of the factual disoutes that I and Mr. Eno have had througout this litigation, I thought that it would be appropriate to bring this matter to the Court's attention.

In addition, of course, there has been no formal Cross Application made to this Court to vacate the "so ordered" portion of the Notices of Voluntary Dismissal. If such motion were to be made then the undersigned would make proper opposition thereto.

In addition to the above, of course, the present status of this action causes it to be dismissed not only under Rule 41(a)(1) but by Rule 41(a)(2) FRCP and, it is to be noted, this Rule is not subject to the provisions of Rule 23(e). Thus, this action, with respect to the parties represented by the undersigned, is dismissed and the Court has no further jurisdiction thereof.

With respect to the Rule 60(b) application the following facts are uncontroverted:

1. On September 5th, 1974 answers to interrogatories on behalf of all plaintiffs, in full accord with the Order of Judge Owen, were served upon the counsel for TOUCHE ROSS.

2. On September 10th, 1974 (prior to the making of the Rule 37 motion on the part of the defendant TOUCHE ROSS) proper conformed and verified copies of interrogatory answers of the plaintiffs IIPL and RANDOLPH were served upon the attorneys for the defendant TOUCHE ROSS.

3. Prior to September 5th, 1974 the plaintiff MICHAEL FAGAN had verified the unverified copies of interrogatory answers served upon the attorneys for the defendant TOUCHE ROSS.

4. Prior to September 5th, 1974 the attorney for GARY MICHAEL had the information in his possession to properly verify answers to interrogatories. (See exhibit annexed hereto).

5. Under state rules the service of unverified documents is not a fatal defect and can be subsequently corrected. This is also true under Federal Rule 6(b) and Federal Rule 61.

6. Under State Rules the attorney for any party can verify any document with the same force and effect as if verified by a party if the party is without the county where the attorney has his office.

7. There was pending, at the time of the pendency of the Rule 37 motion, a Rule 6(b) motion for extension of time.

8. GARY MICHAEL had no obligation to answer interrogatories since he was not a plaintiff in this action at the time.

9. DESPITE A LAPSE OF TIME OF MORE THAN TWO YEARS WITH RESPECT TO THE CLAIMED FAILURE TO COMPLY WITH THE ORDER OF THE COURT THE DEFENDANT TOUCHE ROSS HAS SHOWN NO PREJUDICE WITH RESPECT TO THE CLAIMED LATE FILING OF ANSWERS TO INTERROGATORIES OF THE INDEPENDENT INVESTOR PROTECTIVE LEAGUE (A MAXIMUM OF FIVE DAYS) OF RANDOLPH (A MAXIMUM OF ONE DAY), OF GARY MUCHAEL (A MAXIMUM OF 12 DAYS) AND EVEN OF MICHAEL FAGAN (ALTHOUGH THE ACTUAL CONFORMED COPIES OF HIS ANSWERS WERE NOT FILED WITH THE COURT FOR MANY MONTHS AFTER THE SIGNING THEREOF.

Finally, of course, the purpose of the Court is to decide controversies and not to become involved with claimed questions of attorneys' conduct (See W.T. GRANT vs. HAINES, 2 Cir. 531 Fed.(2nd) 671(1976).

WHEREFORE the undersigned prays that this motion be in all respects granted.

Dated : November 20th, 1976

I. Walton Bader

INDEPENDENT INVESTOR PROTECTIVE LEAGUE
274 MADISON AVENUE
NEW YORK, N. Y. 10016
889-5313

OFFICE OF THE GENERAL COUNSEL

August 15, 1974

Mr. Gary Michael
100 Chalet Village
Stockbridge, Vermont

Dear Mr. Michael:

As you know, the litigation with respect to TELEPROMPTER CORP. has been moving along. In order to properly protect your rights, it will be necessary for me to file a Statement, under oath, setting forth the following information:

1. HOW MANY SHARES OF TELEPROMPTER CORP. DO YOU PRESENTLY OWN? 100
2. IN WHOSE NAME ARE THE SHARES REGISTERED (ARE THEY REGISTERED IN YOUR NAME OR ARE THEY REGISTERED IN THE BROKER'S NAME? Mine
3. WHEN DID YOU BUY THE SHARES? 4/1/72
4. HOW MUCH DID YOU PAY FOR THE SHARES? 30.00 a share
5. HAVE YOU EVER SOLD ANY TELEPROMPTER SHARES? No
6. IF YOU HAVE SOLD SUCH SHARES, HOW MUCH DID YOU RECEIVE FOR THEM? N/A
7. WHAT IS YOUR PRESENT OCCUPATION? Law Student

TELEPROMPTER CORP. is attempting to do everything that it can to harass and [illegible] us and prevent vindication of our rights.

[illegible] receive this information within the next TEN DAYS, there might [illegible] various consequences with respect to your claim. Therefore, would [illegible] please treat this as URGENT.

Sincerely,
INDEPENDENT INVESTOR PROTECTIVE LEAGUE

[illegible]
J. Walton Jones, General Counsel

* * * *

[Copies of the appellants' brief and reply brief submitted on a prior appeal, which were attached to the Sur-Rebuttal Affirmation of I. Walton Bader, have not been reproduced here or elsewhere in the Appendix].

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

HARRY LEWIS et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

73 Civil
3929(LFM)

- -x

RESPONSE OF TOUCHE ROSS & CO. TO "SUR-REBUTTAL AFFIRMATION" DATED NOVEMBER 20, 1976 OF I. WALTON BADER, ESQ.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

This motion was argued on November 19, 1976, at which time the Court took the motion under advisement. Yesterday afternoon, November 22, 1976, we received in the mail a so-called "Sur-Rebuttal Affirmation" of I. Walton Bader, Esq. dated November 20, 1976 postmarked November 21, 1976. No leave of Court was requested, or granted, for the filing of this additional document. If that document is considered by the Court, we respectfully request that the Court consider this affidavit as well.

The title of the affirmation states that it deals with "certain matters transpiring on the argument." In fact, it deals with matter contained in prior papers.

Thus, my answering affidavit of November 8, 1976

(p. 12), referred to an argument before Judge MacMahon on May 7, 1976, and I repeated that matter on the argument on November 19, 1976. Mr. Bader had full opportunity to respond to that statement in his response to my answering affidavit of November 8 and, indeed, on the argument on November 19, but did not do so. Now he simply states that he does not recall what was said on May 7, 1976.

There is no merit to the suggestion that because other defendants did not file papers on this motion, it "be forthwith granted" as to them. Aside from Mr. Bader's clients, the motion concerns only Touche Ross. The Rule 37 motion before Judge Owen was made only by Touche Ross; the proceedings before Judge Owen involved only Touche Ross; the reservation from the consolidation order concerned only those proceedings; the relief so far granted by Judge Owen ran only to Touche Ross and the relief still pending before him concerns only Touche Ross. There is thus no motion pending that concerns anyone other than Touche Ross; and the instant motion seeks either to vacate Judge Owen's order of January 9, 1976 granting relief to Touche Ross or to enjoin him from granting further relief to Touche Ross, or both (see my answering affidavit of November 8, 1976, p.8).

The statement in the "Sur-Rebuttal Affirmation" that "the present status of this action causes it to be dismissed not only under Rule 41(a)(1) but by Rule 41(a)(2) FRCP" has no meaning. No motion for a dismissal under Fed. R. Civ. P. 41(a)(2), which requires notice and an opportunity to be heard, was ever made.

Mr. Bader again repeats certain alleged "facts", now listed on pp. 3-4 of the "Sur-Rebuttal Affirmation", and again states that they are "uncontroverted", whereas they are not only "controverted" but are for the most part not facts at all. Further, the matters stated were in the main all before Judge Owen, and what Mr. Bader now asks is that this Court review Judge Owen's findings and hold them to be "clearly erroneous." Thus (the numbers below match those in the "Sur-Rebuttal Affirmation") at the risk of repetition:

1. The claim that interrogatory answers "in full accord with the order of Judge Owen" were served on September 5, 1974 is directly contrary to Judge Owen's findings (see par. 3, p. 2, of my rebuttal affidavit of November 17, 1976).

2. The irrelevant claim that "proper" answers of IIPL and Randolph were served after the Court order had been violated, is incorrect and was fully considered by Judge Owen (see Exhibit E, p. 8, to my answering affidavit of November 8, 1976). See also our memorandum of law, p. 13 par. 5.

3. The irrelevant and incredible claim with respect to Fagan's answers is dealt with in my answering affidavit of November 8, 1976, pp. 17-19, and in my rebuttal affidavit of November 17, 1976, p. 3.

4. The claim that Mr. Bader had on September 5, 1974 information to enable him to verify Michael's answers is irrelevant and without merit (see my answering affidavit of November 8, 1976, pp. 21-22 and Touche Ross' brief in the

Court of Appeals, Exhibit F to said answering affidavit, pp. 32-33). See also our memorandum of law, p. 12 par. 3.

5. The claim that under State rules it is a mere irregularity for counsel to serve purported copies of interrogatory answers when the originals are not in hand and counsel does not know their status is not only irrelevant but incorrect (see Touche Ross' brief in the Court of Appeals, Exhibit F to my answering affidavit of November 8, 1976, p. 32). Fed. R. Civ. P. 6(b) (enlargement of time) and 61 (harmless error) on their face have nothing to do with the matter.

6. The claim that under State rules an attorney can under certain circumstances verify documents is irrelevant (see Touche Ross' brief in the Court of Appeals, Exhibit F to my answering affidavit of November 8, 1976, pp. 32-33).

7. That Mr. Bader made a motion for an extension of time before Judge Owen is irrelevant. Judge Owen denied the motion (see Exhibit E to my answering affidavit of November 8, 1976, pp. 8-9, and Exhibit F to that affidavit, p. 11).

8. The claim that Michael was not a plaintiff has been answered in my answering affidavit of November 8, 1976, p. 20. See also our memorandum of law, p. 12 par. 1.

9. The claim of lack of prejudice was argued before Judge Owen. His findings with respect to the violation of his order show willfulness, bad faith and fault (Exhibit E annexed to my answering affidavit of November 8, 1976) and the sanctions he imposed were fully warranted (see Touche

Ross' brief in the Court of Appeals, Exhibit F to said answering affidavit, pp. 33-36).

LAWRENCE R. ENO

Sworn to before me this
23rd day of November, 1976.

Marlene Herman
Notary Public

MARLENE HERMAN
NOTARY PUBLIC, State of New York
No. 41-0367855
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 19 78

DEPUTY

DEC 9 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE et al.,

Plaintiffs,

-against-

TELEPROMPTER CORPORATION et al.,

Defendants.

----------x

HARRY LEWIS et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

----------x

MEMORANDUM

73 Civ. 4133 RO

File in (73 Civ. 3929 VLB) WF

MacMAHON, District Judge.

Civil action 73 Civ. 4133 was assigned to Judge Owen but is related to 73 Civ. 3929, assigned to me, and normally the later action (73 Civ. 4133) would have been transferred to me pursuant to Calendar Rule 13 of this court (related case rule). However, before either Judge

Owen or I was aware of the related nature of these two cases, certain proceedings with respect to a motion by defendant Touche Ross & Co. to dismiss 73 Civ. 4133 under Rule 37, Fed.R.Civ.P., were pending before Judge Owen, who held hearings on that motion on November 3, 13 and 14, 1974.

My order of November 18, 1974 consolidating these two cases and several others, therefore, expressly provided that:

> "The consolidation here ordered shall be without prejudice . . . to constituent action bearing number 73 Civ. 4133, to any order that may be made by Hon. Richard Owen, U.S.D.J., in proceedings pending before him."

Judge Owen filed an opinion and order on January 9, 1976 dismissing the action against Touche Ross & Co., assessing expenses against plaintiff, Independent Investor Protective League, and its attorney, and referring the record for further consideration (disciplinary proceedings) pursuant to General Rule 5(f) of this court. Plaintiff and its attorney appealed from that order and the appeal was dismissed by the Court of Appeals on September 17, 1976.

In the interim, however, counsel for plaintiffs submitted to the clerk's office two separate notices of voluntary dismissal of 73 Civ. 4133, pursuant to Rule 41, Fed.R.Civ.P. The clerk's office understandably, but erroneously, in view of the express reservation in the order of consolidation, sent the notices to me for my signature. The notices should have been directed to Judge Owen, since the proceedings in 73 Civ. 4133 were still pending before him, as they are to this day. Those notices were "So Ordered" and inadvertently signed by me in the course of routine business, without any awareness or intention that they should terminate or in any way undermine or affect Judge Owen's jurisdiction over proceedings pending before him in 73 Civ. 4133.

Accordingly, I hereby vacate:

(1) the "Order and Notice of Voluntary Dismissal Pursuant to Rule 41(a)(1)(i) FRCP of Plaintiff Martin F. Randolph, Jr. Only," signed on October 15, 1974 and docketed on October 17, 1974; and

(2) the "Order and Notice of Voluntary Dismissal Purs. to FRCP 41," signed and docketed on January 2[illegible], 1976.

Since the order of consolidation specifically excepted the proceedings pending before Judge Owen in 73 Civ. 4133, he is the appropriate judge to hear and determine any matters relating to or arising out of those proceedings or that action. The remaining matters of this motion, including the letter application to disqualify Judge Owen, are, therefore, respectfully referred to Judge Owen.

So ordered.

Dated: New York, N. Y.
December 8, 1976

Lloyd F. MacMahon

LLOYD F. MacMAHON
United States District Judge

Judge Owen

m: Judge MacMahon

842

For your attention.

ER

Lloyd

TEX: BABKLN 666244 UW

REPRESENTED IN WASHINGTON D C

/17/76

December 9th, 1976

Civil Action 73civil 3929 LFM

COURT
DEC 1 1977
S. D. OF N. Y.

Hon. Lloyd F. MacMahon
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York NY 10007

Dear Judge MacMahon,

Enclosed herewith is a Power of Attorney nunc pro tunc from the plaintiff MICHAEL FAGAN in this action.

Thus, it is submitted, that the interrogatory answers served on September 5th, 1974 are, in effect, answers served in compliance with the Order of the District Court and thus, as plaintiffs have contended, the Order of the District Court was, in fact, fully complied with on September 5th, 1974 and no sanctions were warranted against the plaintiffs or their attorney.

Respectfully,

I. Walton Bader

IWB/iwb
cc: Rosenman Colin,

A CODE 212
GTON 2-6860

CABLE ADDRESS: "BAPATLAW" NEW YORK
TELEX: BABKLN 666244 UW

LAW OFFICES
BADER AND BADER
65 COURT STREET
WHITE PLAINS, N. Y. 10601

AXIMILIAN BADER
WALTON BADER
N BADER
DICT BADER (MASS. BAR).

REPRESENTED IN WASHINGTON, D. C.

December 9th, 1976

Re: Lewis vs. Teleprompter
Civil Action 73civil 3929 LFM

Hon. Lloyd F. MacMahon
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York NY 10007

Dear Judge MacMahon,

Enclosed herewith is a Power of Attorney nunc pro tunc from the plaintiff MICHAEL FAGAN in this action.

Thus, it is submitted, that the interrogatory answers served on September 5th, 1974 are, in effect, answers served in compliance with the Order of the District Court and thus, as plaintiffs have contended, the Order of the District Court was, in fact, fully complied with on September 5th, 1974 and no sanctions were warranted against the plaintiffs or their attorney.

Respectfully,

I.Walton Bader

IWB/iwb
cc: Rosenman Colin,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS

Plaintiff

Civil Action
73 Civil 3929LFM

against

TELEPROMPTER CORPORATION, et. al.

Defendants

NOTICE OF FILING OF POWER OF ATTORNEY

PLEASE TAKE NOTICE that a Power of Attorney from the plaintiff MICHAEL FAGAN is being filed herewith.

Dated : December 9th, 1976

Yours, etc.

BADER and BADER
Attorneys for Plaintiff
65 Court Street
White Plains NY 10601

TO: ROSENMAN, COLIN, etc.
Attorneys for defendant
TOUCHE ROSS & COMAPNY
575 Madison Avenue
New York N.Y. 10022

AFFIRMATION OF SERVICE

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I. Walton Bader, a Member of the Bar of the State of New York, hereby states under penalties of perjury that on December 9th 1976 I served a copy of the forgeing document upon ROSENMANÇOLIN, etc. attorneys for the defendant TOUCHE ROSS.

Dated : December 9th, 1976

I. Walton Bader

Disability Clause, if not desired cross out: [illegible]

Notice: The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned.

Know All Men by These Presents, *which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:*

That I MICHAEL FAGAN, of Watson Lane Danbury Conn. 05810
(insert name and address of the principal)

do hereby appoint I.WALTON BADER of 270 Madison Avenue, New York NY 10016
(insert name and address of the agent, or each agent, if more than one is designated)

my attorney(s)-in-fact TO ACT

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally". Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

First: in my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

[Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (K), inclusive, shall automatically constitute an elimination also of subdivision (L).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

~~(A) real estate transactions~~ ..... [ ]

~~(B) chattel and goods transactions~~ ..... [ ]

~~(C) bonds, stocks and commodity transactions~~ ..... [ ]

~~(D) banking transactions;~~ ..... [ ]

~~(E) business operations~~ ..... [ ]

~~(F) insurance transactions~~ ..... [ ]

~~(G) estate transactions~~ ..... [ ]

(H) claims and litigation; ..... [ ]

~~(I) personal relationships and affairs~~ ..... [ ]

~~(J) pensions, profit sharing, retirement~~ ..... [ ]

~~(K) records, reports and statements~~ ..... [ ]

~~(L) all other matters~~ ..... [ ]

[Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.]

Second: with full and unqualified authority to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select.

Third: This power of attorney shall not be affected by the subsequent disability or incompetence of the principal.

Fourth: To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof by operation of law or otherwise shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

In Witness Whereof, *I have hereunto signed my name and affixed my seal this* 6th *day of* ~~October~~ December, 19 76

Nunc pro tunc as of August 30, 1974 Michael Fagan (Seal)
(Signature of Principal)
Michael Fagan

STATE OF CONNECTICUT COUNTY OF FAIRFIELD ss.: Danbury

On the 6th *day of* ~~October~~ December 1976 *before me personally came*

Michael Fagan

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Notary Public

GERRIT H. ZWART
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL FAGAN

TO

I. WALTON BADER

Power of Attorney
Statutory Short Form

Nunc pro tunc as of August 39th, 1974
Dated, ..., 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DISTRICT COURT
FILED
DEC 14 1976
S.D. N.Y.

HARRY LEWIS

Plaintiff

against

TELEPROMPTER CORPORATION, et. al.

Defendants

Civil Action
73 Civil 3929 ~~LFM~~
LLB

NOTICE OF FILING OF POWER OF ATTORNEY

PLEASE TAKE NOTICE that a Power of Attorney from the plaintiff MICHAEL FAGAN is being filed herewith. This Notice is being filed in connection with a pending Motion before Judge Mac Mahon in this case pending undetermined, in consitutent action 73 C413

Dated : December 13th, 1976

Yours, etc.

BADER and BADER
Attorneys for Plaintiff
65 Court Street
White Plains NY 10601

TO: ROSENMAN, COLIN, etc.
Attorneys for defendant
TOUCHE ROSS & COMAPNY
575 Madison Avenue
New York N.Y. 10022

AFFIRMATION OF SERVICE

STATE OF NEW YORK
COUNTY OF WESTCHESTER ss:

I. Walton Bader, a Member of the Bar of the State of New York, hereby states under penalties of perjury that on December 13th 1976 I served a copy of the forgoing document upon ROSENMAN COLIN, etc. attorneys for the defendant TOUCHE ROSS.

Dated : December 9th, 1976

I. Walton Bader

Notice: The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned.

Know All Men by These Presents, *which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:*

That I MICHAEL FAGAN, of Watson Lane Danbury Conn. 05810
(insert name and address of the principal)

do hereby appoint I.WALTON BADER of 270 Madison Avenue, New York NY 10016
(insert name and address of the agent, or each agent, if more than one is designated)

my attorney(s)-in-fact TO ACT

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally". Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

First: in my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

[Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (K), inclusive, shall automatically constitute an elimination also of subdivision (L).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

~~(A) real estate transactions~~ ..... [ ]
~~(B) stock and bond transactions~~ ..... [ ]
~~(C) banking transactions and safe deposit transactions~~ ..... [ ]
~~(D) business operations;~~ ..... [ ]
~~(E) insurance transactions~~ ..... [ ]
~~(F) estate transactions~~ ..... [ ]
~~(G) tax matters~~ ..... [ ]
~~(H) claims and litigation;~~ ..... [ ]
~~(I) personal relationships and affairs~~ ..... [ ]
~~(J) miscellaneous administrative services~~ ..... [ ]
~~(K) business and professional continuation~~ ..... [ ]
~~(L) all other matters~~ ..... [ ]

[Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.]

BEST COPY AVAILABLE

Second: with full and unqualified authority to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select.

Third: This power of attorney shall not be affected by the subsequent disability or incompetence of the principal.

Fourth: To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof by operation of law or otherwise shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

In Witness Whereof, *I have hereunto signed my name and affixed my seal this* 6th *day of* ~~October~~ December, 1976

Nunc pro tunc as of August 30, 1974 Michael Fagan (Seal)
(Signature of Principal)
Michael Fagan

STATE OF CONNECTICUT *COUNTY OF* FAIRFIELD *ss.:* Danbury

On the 6th *day of* ~~October~~ December 1976 *before me personally came*

Michael Fagan

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Notary Public

GERRIT H. ZWART
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL FAGAN

TO

I. WALTON BADER

Power of Attorney

Statutory Short Form

Nunc pro tunc as of August 30th, 1974

Dated, ..., *19*.....

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et al., Plaintiffs, -against- TELEPROMPTER CORP., et al., Defendants.	73 Civil 3929 (VLB) ORDER TO SHOW CAUSE WITH A STAY

Upon the annexed affidavits of Gerald Walpin and Lawrence R. Eno, both sworn to December 20, 1976, IT IS HEREBY, ORDERED THAT ~~that~~ the plaintiffs represented by Bader & Bader, and on whose behalf the notice of deposition dated December 14, 1976 and subpoena duces tecum dated December 14, 1976 (annexed as Exhibits A and C, respectively, to said affidavit of Gerald Walpin) were served, show cause in Room _____ of the United States Courthouse, Foley Square, New York, at 2:30 P.M. on _____, or as soon thereafter as counsel can be heard, why an order, pursuant to Rules 26(c) and 45 of the Federal Rules of Civil Procedure, should not be made vacating said notice of deposition, quashing said subpoena duces tecum, and directing that the depositions of Touche Ross & Co. and Lawrence R. Eno shall not be had, and for such other and further relief as to the Court may seem just and proper, including the award to Touche Ross & Co. of its expenses, including attorneys fees, incurred in relation to this motion; and it is further

ORDERED that pending the determination of this motion, the taking of the depositions provided in said notice of deposition and in said subpoena duces tecum be and the same hereby are stayed; and it is further

ORDERED that service of this order to show cause, by serving copies thereof and of the papers on which it is based, shall be sufficient if served by mail on Bader & Bader, 65 Court Street, White Plains, New York, on or before December ____ 1976; and it is further

ORDERED that any answering papers shall be served so as to be received by the attorneys for the movants on or before _____ December _____ 1976.

Dated: New York, New York
December 20, 1976

Issued

U. S. D. J.

I consent to the Stay above and papers to be served by plaintiff on defendants by mail by December 30, 1976.

I. Walton Bader
I. WALTON BADER

Hearing has been scheduled for January 14 1977 at 2:30 pm

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et al., Plaintiffs, -against- TELEPROMPTER CORP., et al., Defendants.	73 Civil 3929 (VLB)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

GERALD WALPIN, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Freund Lewis & Cohen, who are the attorneys for defendant Touche Ross & Co. ("Touche Ross") herein. We also represent on this motion Lawrence R. Eno., Esq., a member of our firm, who has been named as a witness in the notice of deposition and subpoena to which this motion is addressed. Mr. Eno is the partner in our firm who has been in charge of matters relating to the action of "Independent Investor Protective League, et. al. v. Teleprompter Corporation, et. al." (73 Civ. 4133).

We received in the mail on December 17, 1976, a "Notice of Taking Testimony" dated December 14, 1976 served by Bader & Bader as "Attorneys for Plaintiffs IIPL etc." to take the deposition on December 22, 1976 of Touche Ross and Mr. Eno "as a witness". A copy of said notice is annexed hereto as Exhibit A. Although the affirmation to that notice made by I. Walton Bader, Esq. states that it was served by mail on our firm on December 14, 1976, the notice arrived on December 17,

1976, in an envelope postmarked the afternoon of December 15, 1976 in Panama City, Florida. Another copy also arrived on December 17, 1976 in an envelope postmarked the afternoon of December 16, 1976. Copies of those envelopes are annexed as Exhibit B. Also part of Exhibit B is a copy of the notice as filed in the Clerk's office showing that it was filed at 9:52 A.M. on December 14, 1976 and that at that time Mr. Bader affirmed that he had served the notice - whereas the envelopes in which the notice was mailed show the contrary.

As appears from Mr. Eno's annexed affidavit, at about 4:00 p.m. on December 15, 1976, he was personally served with a subpoena duces tecum dated December 14, 1976 to appear for his deposition on December 22, 1976. A copy of that subpoena is annexed hereto as Exhibit C.

This motion is made pursuant to Fed. R. Civ. P. 26(c) and 45 for an order vacating said notice of deposition, quashing said subpoena and determining that the depositions of Touche Ross and Mr. Eno shall not be held. By reason of the circumstances, it is requested that, pursuant to Rule 26(c), Touche Ross be awarded its expenses, including attorneys' fees, incurred in relation to this motion.

This motion is being made returnable in the consolidated action entitled "Harry Lewis v. Teleprompter Corp., et al." (73 Civil 3929) because that is the caption on the notice and subpoena (Exhibits A and C). The matter, however, concerns proceedings presently pending before Hon. Richard Owen, U.S.D.J., in the action entitled "Independent Investor Protective League, et al. v. Teleprompter Corp., et al." (73 Civ. 4133), and on the return of the motion we will request that the motion be referred to Judge Owen. The consolidation order of November 18, 1974 (Exhibit G annexed hereto) specifically excepted the proceedings before Judge Owen in

73 Civ. 4133 from the consolidation. Hon. Lloyd F. MacMahon, U.S.D.J., who until recently was in charge of the consolidated action, by an order dated December 8, 1976 determined that Judge Owen is "the appropriate judge to hear and determine any matters relating to or arising out of those proceedings or that action," namely, 73 Civ. 4133. A copy of Judge MacMahon's order of December 8, 1976 is annexed hereto as Exhibit D. Judge MacMahon accordingly, by that order, referred to Judge Owen motions concerning 73 Civ. 4133 that had been made by Mr. Bader before Judge MacMahon "including the letter application to disqualify Judge Owen."

PRIOR PROCEEDINGS

As will more particularly hereafter be shown, by an order dated January 9, 1976, Judge Owen dismissed "the entire action [73 Civ. 4133] as to Touche Ross with prejudice". (matter in brackets added) A copy of that order is annexed hereto as Exhibit E. Mr. Bader and his clients appealed from that order to the Court of Appeals for the Second Circuit which, on or about September 17, 1976, dismissed that appeal. Touche Ross' brief on that appeal (copy annexed hereto as Exhibit F), pp. 3-24, sets forth the facts which led to the entry of Judge Owen's order. Those facts will not be repeated here, but in brief they show the following:

On September 26, 1973, the action of "Independent Investor Protective League et al. v. Teleprompter Corporation, et al." (73 Civ. 4133) was begun. The action is a class action on behalf of stockholders of Teleprompter Corporation brought by four plaintiffs [namely, Indepen-

dent Investor Protective League ("IIPL"), Martin F. Randolph, Jr. ("Randolph"), Michael Fagan ("Fagan") and Gary Michael ("Michael")], against Teleprompter Corporation, Touche Ross and other defendants alleging violations of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Plaintiffs other than IIPL having failed for a period of more than 8 months to answer certain interrogatories and IIPL, after the lapse of more than 8 months, having served manifestly insufficient and unresponsive answers, Touche Ross on August 2, 1974 moved, pursuant to Fed. R. Civ. P. 37(a), for an order compelling answers. On August 16, 1974, Judge Owen, to whom the case had been assigned, granted the motion in its entirety and directed that answers be served within 20 days. The 20 days expired on September 5, 1974.

On September 6, 1974, under postmarks of September 5, 1974, Touche Ross' counsel received in the mail from plaintiffs' counsel, I. Walton Bader, Esq., unconformed copies of what purported to be the answers of the several plaintiffs. Judge Owen later found that, when the purported copies were mailed on September 5, 1974, the original answers of plaintiffs Randolph, Fagan and Michael had not been received by Mr. Bader and that there was no credible evidence that the IIPL answers had been timely executed and served.

After various efforts by Mr. Bader to conceal the fact that original answers had not been received when the copies were mailed (more fully detailed in Exhibit F annexed at pp. 5-8), Touche Ross, on September 13, 1974, moved pursuant to Fed. R. Civ. P. 37(b) and (d) to dismiss the action

as to it and to require the payment to Touche Ross of its expenses, including attorneys' fees.

Touche Ross' motion was heard by Judge Owen on September 20, 1974. Thereafter, an evidentiary hearing was directed by Judge Owen and the evidentiary hearing proceeded before him on November 4, 13 and 14, 1974.

On November 18, 1974, Judge MacMahon signed an order consolidating 73 Civ. 4133 with other similar actions (Exhibit G annexed hereto). However, the order of consolidation expressly provided that "The consolidation hereby ordered shall be without prejudice . . . with respect to constituent action bearing number 73 Civ. 4133, to any order that may be made by Hon. Richard Owen, U.S.D.J., in proceedings pending before him".

On January 9, 1976, Judge Owen rendered his decision and order (Exhibit E annexed).

In that decision and order, Judge Owen granted Touche Ross' motion. Judge Owen concluded on the basis of all the evidence that on September 5, 1974 Mr. Bader (despite his denials) had himself mailed the unconformed copies of all the answers to Touche Ross' counsel, and that his purpose was to have that firm believe that all the original answers had been received by him, when in fact they had not been, and that they were due and timely served in accordance with the Court's order on the very last day for such service; and that he thereafter sought to lead Touche Ross' counsel to believe that such was in fact the case.

Judge Owen further found that when Mr. Bader was finally compelled, under threat of Court action, to reveal that he did not have all the originals, he and his client, IIPL, through its official, one Sands (who turned out to be Mr. Bader's brother-in-law), collaborated to create a "concocted story" and that they both "made false statements and gave false testimony pursuant to an evolving plan to first deceive counsel and later the Court as to the circumstances surrounding the mailing of the purported 'answers' to interrogatories . . . on September 5, 1974". The details in that regard are fully set forth in Exhibit F annexed, at pp. 3-24.

Judge Owen dismissed the entire action with prejudice as to Touche Ross and directed that Touche Ross' expenses, including attorneys' fees, be paid by IIPL and Mr. Bader. The amount of those expenses has not yet been fixed and those proceedings are pending before Judge Owen.

Judge Owen also stated that, with respect to Mr. Bader, "conduct such as that engaged in" by him "cannot and will not be countenanced by the Court", and that he was therefore "referring this record for further consideration pursuant to Rule 5(f) of the General Rules of this Court providing for the disciplining of attorneys".

On January 23, 1976, IIPL, Randolph and Mr. Bader filed a notice of appeal from Judge Owen's order to the Court of Appeals for the Second Circuit. As before noted, a copy of Touche Ross' brief on that appeal is annexed hereto as Exhibit F. On or about September 17, 1976, the Court of Appeals rendered its decision dismissing the appeal as taken from a non-final order.

After he had filed the notice of appeal from Judge Owen's order, Mr. Bader took the following actions, among other things:

1. Mr. Bader filed a motion to remand in the Court of Appeals on the ground of "newly discovered evidence" which he kept supplementing with a plethora of papers. This motion died when the appeal was dismissed.

2. While the appeal was pending, Mr. Bader moved before Judge MacMahon for the lifting of the injunction contained in the consolidation order (Exhibit G, par. 7) so that Mr. Bader could sue Touche Ross in the state court. Judge MacMahon denied this motion by an order dated July 29, 1976.

3. Mr. Bader also made before Judge MacMahon substantially the same motion as the one in the Court of Appeals to remand, linked with a motion to determine that Judge Owen lacked jurisdiction. Judge MacMahon denied those motions by his order of July 29, 1976 because of the pendency of the appeal.

4. On or about October 26, 1976, Mr. Bader renewed before Judge MacMahon, in other form, the motions previously made on the grounds of "newly discovered evidence" and lack of jurisdiction. Those are the motions which were referred, over Mr. Bader's objection, by Judge MacMahon to Judge Owen by the order of December 8, 1976 (Exhibit D). Judge MacMahon also in that order directed that his signature be stricken from certain Rule 41(a)(1) notices of dismissal that Mr. Bader had caused to be filed in an attempt to deprive Judge Owen of jurisdiction.

5. On November 26, 1976, we received by mail a "Demand for Admissions Pursuant to Rule 36 Federal Rules Civil Procedure". A copy of that "Demand" is annexed as Exhibit H. Although Mr. Bader affirmed that the "Demand" was served by mail on November 24, 1976, it arrived in an envelope postmarked November 25, 1976. Touche Ross' objection to this "Demand" pursuant to Fed. R. Civ. P. 36(a) will be served with the service of these papers.

This "Demand" had been preceded by correspondence between Mr. Bader and Mr. Eno regarding Judge Owen, which is more particularly referred to in Mr. Eno's annexed affidavit. Mr. Eno's affidavit demonstrates that that correspondence is part of a vendetta of harassment and vituperation that Mr. Bader has been conducting against Mr. Eno for about two years in retaliation for having made the motion before Judge Owen which resulted in his finding that Mr. Bader had presented a "concocted story" to the Court, had made false statements and given false testimony, and that the record would be referred for further consideration pursuant to Rule 5(f) of the General Rules of this Court dealing with disciplinary proceedings.

As Mr. Eno's affidavit shows, beginning with the papers filed after the evidentiary hearing before Judge Owen, Mr. Bader has accused Mr. Eno of forgery, altering evidence, filing false affidavits, giving false testimony, making false statements, wilfully violating court orders, and the like. Some of these matters are reflected in Touche Ross' brief in the Court of Appeals (Exhibit F, pp. 39-41).

It is apparent that the "Demand for Admissions" (see Exhibit H, items 27-32), and the notice of deposition and subpoena which are the subject of this motion, are part of that campaign of harassment. In his papers in the Court of Appeals, Mr. Bader charged that Judge Owen had acted irregularly in the proceeding (see Exhibit F, p. 45), and he is now attempting to harass not only Mr. Eno but also Judge Owen.

THE NOTICE OF DEPOSITION SHOULD BE VACATED AND THE SUBPOENA SHOULD BE QUASHED

The notice of deposition seeks to examine both Touche Ross and Mr. Eno (Exhibit A annexed). There is no indication in the notice of the purpose for the examination of Touche Ross. The subpoena addressed to Mr. Eno (Exhibit C annexed) shows that the purpose of the examination of Mr. Eno is to inquire with respect to Judge Owen.

Preliminarily, it may be noted that the notice of deposition is defective because it does not comply with Fed. R. Civ. P. 30(b)(1), which provides that "If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice". The designation of the materials to be produced as set forth in the subpoena served on Mr. Eno is not attached to or included in the notice of deposition.

There are, however, broader grounds for the relief sought herein:

1. If the deposition is intended for use in the consolidated action (73 Civ. 3929), the notice and subpoena have

been served in violation of the consolidation order of November 18, 1974 (copy annexed hereto as Exhibit G). Paragraph 3 of that order gives only to lead counsel (the firm of Wolf Popper Ross Wolf & Jones) the right to initiate and conduct discovery in the consolidated action. Mr. Bader may not conduct such discovery. It does not even appear that the notice of deposition has been brought to the attention of lead counsel in that action.

2. If the deposition is intended for use in action 73 Civ. 4133 as it remained before Judge Owen, which involved plaintiffs' claims against Touche Ross, by Judge Owen's order of January 9, 1976 (Exhibit E annexed) that "entire action" has been dismissed "as to Touche Ross with prejudice". Mr. Bader may not conduct such discovery in that dismissed action.

3. The deposition and subpoena have plainly been served as part of a retaliatory campaign of harassment of Mr. Eno. Fed. R. Civ. P. 26(c) on its face provides that a protective order denying discovery should be made to protect a person from "annoyance" or "oppression". Thus:

In a letter to Mr. Eno dated October 22, 1976, Mr. Bader stated that, in his absence from his office, Mr. Bader had received a telephone message from an individual who identified himself as "Jack Le Clair" who wanted to tell Mr. Bader that Mr. Eno was "personally acquainted with Judge Owen". Mr. Bader said in the letter that he wanted to know if Mr. Eno was "personally acquainted with Judge Owen and the extent, if any, of your personal acquaintance" (Exhibit 1 to Mr. Eno's affidavit).

Although it is doubtful that any response to Mr. Bader's letter was called for, on November 2, 1976, Mr. Eno set forth the facts as to his acquaintanceship with Judge Owen which would have satisfied any legitimate inquiry. In that letter (Exhibit 2 to Mr. Eno's affidavit), Mr. Eno noted that at the first conference with Judge Owen with all counsel in January 1974, Judge Owen had greeted Mr. Eno and referred to the fact that they had met as adversaries many years before in the case of "Kaiser-Frazer Corporation v. Otis & Co." Mr. Eno went on to describe that action which was begun in 1948. Mr. Eno stated that he believed his last contact with Judge Owen in that case was in 1951. Mr. Eno then went on to state:

> "In the 25 years since 1951, outside of appearances before him in connection with the instant action, I recall seeing Judge Owen on no more than four occasions when we simply exchanged pleasantries: once when he appeared for an interview before the full Committee on the Judiciary of the Association of the Bar of the City of New York, of which I was then a member; twice by chance between acts at the opera; and once at a function where a large number of other persons were present."

If Mr. Bader believed that any of these facts gave him grounds for complaint, he could have instituted appropriate proceedings.

Apparently, Mr. Bader did not believe that those facts entitled him to any relief, for he sent another letter dated November 5, 1976 (Exhibit 3 to Mr. Eno's affidavit). The questions that Mr. Bader then asked showed that his purpose was to oppress and annoy. These are the questions he asked:

> "1. To your best recollection what were the dates, times, and places of each and every communication that you had with Judge Owen, whether such communications were personal, by telephone, or by written communication.

"2. Are there copies of such written communications in your possession and, if so, where can I inspect them.

"3. At each meeting that you had with judge (sic) Owen, to the best of your recollection, what was discussed.

"4. Did you and Judge Owen, other than the meetings set forth in your November 2, 1976 letter, have any telephone conversations and, if so, what were the dates, times and places of such telephone conversations and what was discussed between you.

"5. What were the circumstances of the interview that Judge Owen had with the full Committee of the Judiciary of the Association of the Bar of the City of New York.

"6. What was the date of the interview.

"7. What was discussed at the interview.

"8. Is there any written transcript of the proceedings at the interview, and, if so, where can such a transcript be obtained.

"9. Did the Judiciary Committee of the Bar Association of the City of New York make any recommendation after such interview. If so, is there a copy of such recommendation and where could I obtain the same.

"10. Who were the other members of the Committee.

"11. Was the recommendation made by the Committee unanimous or were there dissenting recommendations and, if so, what recommendation did you make.

"12. What was the name of the opera that you attended where you met Judge Owen and what was the date of the meeting.

"13. What was the function at which you met Judge Owen where a large number of other persons were present and what was the date of this function.

"Since I do not recall Judge Owen making any statement in January 1974 that you and he had met as adversaries in the case of Kaiser-Frazer Corporation vs. Otis & Company I would appreciate knowing if you have any notes of what was said at that meeting and whether I could receive a copy of such notes.

"Finally, please explain to me why you did not disclose to me the circumstances of your relationship with Judge Owen, and particularly the interview had by Judge Owen with the full Committee on the Judiciary of the Association of the Bar of the City of New York at the commencement of the proceedings before Judge Owen or at any time until this matter was called to your attention by my October 22nd letter."

In another letter dated November 19, 1976, Mr. Bader went on to say that he wanted the above questions answered with respect "to any communications between any agent or member of your firm and Judge Owen." (Exhibit 4 to Mr. Eno's affidavit.)

That harassment is Mr. Bader's purpose is also evident from the irrelevant items set forth in the subpoena duces tecum served on Mr. Eno, which call upon Mr. Eno to produce (Exhibit C annexed):

> "1. Telephone logs from Sept. 5, 1974 to date.
>
> "2. Payroll & employment records from Sept. 5, 1974 to date.
>
> "3. Minutes of meeting of Judiciary Committee of N.Y. City Bar Assn at which Judge Owen appeared for interview.
>
> "4. Tickets to opera performances and function at which you met Judge Owen."

It is clear that nothing involved in the deposition is "relevant to the subject matter involved in the pending action", which is the only discovery permitted under Fed. R. Civ. P. 26 (b)(1), and that its purpose is simply to conduct a general inquisition in the hope of finding some improper conduct by Judge Owen. This clearly should not be permitted.

The motion should accordingly be granted in all respects.

An order to show cause is prayed for since the time is too short between the time that the notice of deposition and subpoena were served and the scheduled date of the deposition

of December 22, 1976, to bring on this motion in regular course. A stay is therefore required to prevent the deposition proceeding before this motion can be determined. There has been no prior application for the relief sought herein.

Gerald Walpin

Gerald Walpin

Sworn to before me this
20th day of December, 1976.

Norma I. Gonzalez

NORMA I. GONZALEZ
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-4606492
Qualified in Queens County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS

Plaintiff

against

Civil Action
73 Civil 3929LFM

TELEPROMPTER CORPORATION et. al.

Defendants

NOTICE OF TAKING TESTIMONY

SIRS:

PLEASE TAKE NOTICE that the deposition of TOUCHEROSS and COMPANY, by its partner or another member in charge of the defense of a certain action known as INDEPENDENT INVESTOR PROTECTIVE LEAGUE vs. TELEPROMPTER CORPORATION (Civil Action 73 Civil 4133) and LAWRENCE R. ENO, as a witness, will be taken at the office of the Clerk of this Court, Foley Square, New York,N.Y. on December 22nd, 1976 at 10 o'clock in the forenoon.

The depositions will continue from day to day until completed. You are invited to attend and Cross-Examine.

Dated : December 14th,1976

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs IIPL
etc.
65 Court Street
White Plains NY 10601

TO: Rosenman,Colin,etc.
Attorneys for Defendant
TOUCHE ROSS
575 Madison Avenue
New York NY 10022

AFFIRMATION OF SERVICE

STATE OF NEW YORK ss:
COUNTY OF NEW YORK

I.WALTON BADER, a member of the Bar of the State of New York hereby states under penalties of perjury that on December 14th,1976 he served a copy of the foregoing document by mail upon ROSENMAN COLIN, etc.

I.Walton Bader

the herein, by delivering a true copy thereof to n personally. Deponent knew the
person so served to be the person mentioned and described in said papers as the therein.
Sworn to before me, this day of 19

FILED
U.S. DISTRICT COURT
DEC 14 9 52 AM '76
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS

Plaintiff

against

TELEPROMPTER CORPORATION et. al.

Defendants

Civil Action
73 Civil 3929

NOTICE OF TAKING TESTIMONY

SIRS:

PLEASE TAKE NOTICE that the deposition of TOUCHROSS and COMPANY, by its partner or other member in charge of the defense of a certain action known as MANAGEMENT INVESTOR PROTECTIVE LEAGUE, vs. TELEPROMPTER CORPORATION (Civil Action 73 Civil 4132) and LAWRENCE R. ENO, as a witness, will be taken at the office of the Clerk of this Court, Foley Square, New York, N.Y. on December 22nd, 1976 at 10 o'clock in the forenoon.

The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

Dated : December 14th, 1976

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs IPP, etc.
65 Court Street
White Plains NY 10601

TO: Rosenman, Colin, etc.
Attorneys for Defendant
TOUCHE ROSS
E 575 Madison Avenue
New York NY 10022

AFFIRMATION OF SERVICE

STATE OF NEW YORK ss:
COUNTY OF NEW YORK

I, WALTON BADER, a member of the Bar of the State of New York, hereby states under penalties of perjury that on December 14th, 1976 he served a copy of the foregoing document by mail upon ROSENMAN, COLIN, etc.

I. Walton Bader

EXHIBIT B

the
person so served to be the person mentioned and described in said papers as the
personally. Deponent knew the
therein.

Walton Bader
65 Court Street
White Plains NY 10601

FL 32401
DEC 15 PM 1984

Rosenman Colin, etc.
575 Madison Ave
New York NY 10022

BADER AND BADER
270 MADISON AVENUE
NEW YORK, N. Y. 10016

PM
16 DEC

Rosenman, Colin, etc.
575 Madison Avenue
New York NY 10022

869 Deadline Dec 22 at 4:00 PM

DEPOSITION SUBPOENA TO TESTIFY OR PRODUCE DOCUMENTS OR THINGS (Revised 11-73) D.C. Form No. 9

United States District Court

FOR THE

Southern District of New York

CIVIL ACTION FILE NO.

HARRY LENIS

vs.

TELEPROMPTER CORP et al

73 Civil 3929

TO: LAWRENCE R. ENO, 575 MADISON AVE NY, NY 10022

YOU ARE COMMANDED to appear at the Office of the Clerk of this Court Ground Floor, Foley Square New York NY in the city of on the 22 day December, 1976, at 10 o'clock A. M. to testify on behalf of Plaintiffs 1106, etc. in consolidated action 73 Civil 3133

at the taking of a deposition in the above entitled action pending in the United States District Court for the Southe District of New York and bring with you[1]

1. Telephone Logs from Sept 5 1974 to date
2. Payroll & employment records from Sept 5 1974 to date
3. Minutes of Meeting of Judiciary Committee of the City Bar Assn at which Judge Owen appeared for interview
4. Tickets to opera performances and function at which you met Judge Owen

Dated Dec 14, 1976

BOSER & BOSER
Attorney for 1106 etc.
65 Court Street
Address White Plains NY 10601

RAYMOND F. BURGHARDT, Clerk
Clerk.
By M. C. Bauer
Deputy Clerk.

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30 (b) (6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

1. Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.

RETURN ON SERVICE

Received this subpoena at on
and on at
served it on the within named
by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law.[2]

Dated: _____, 19____

_____,

By _____

Service Fees
Travel _____ $ _____
Services _____

Total _____ $

Subscribed and sworn to before me, a this
day of 19

_____

2. Fees and mileage need not be tendered to the w[illegible] service of a subpoena issued in behalf of the United States or an officer or agency thereof, or upon service of a subpoena issued on behalf of a party, authorized to proceed in forma pauperis, where the payment thereof is to be made by the United States marshal, as authorized in sec. 825 of title 28, U.S.C.

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

GPO 97-639

* * * *

[Exhibits D through G to the preceding affidavit are not reproduced here. Other copies of some of the same documents appear elsewhere in the Appendix, as follows:

Exhibit D -	Order of Judge MacMahon dated December 8, 1976	pp. 838-841
Exhibit E -	Opinion and Order of Judge Owen dated January 9, 1976	pp. A-25 to A-42
Exhibit F -	Brief of Defendant-Appellee Touche Ross & Co. on prior appeal	Not in Appendix
Exhibit G -	Order of Consolidation dated November 18, 1974	pp. 605-610.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et. al.

Plaintiffs

against

Civil Action
73 Civil 3929 LFM

TELEPROMPTER CORP. et. al.

Defendants

DEMAND FOR ADMISSIONS PURSUANT
TO RULE 36 FEDERAL RULES OF
CIVIL PROCEDURE

TO: ROSENMAN, COLIN, etc.
Attorneys for Defendant
TOUCHE ROSS & COMPANY
575 Madison Avenue
New York NY 10022

PLEASE TAKE NOTICE, the pursuant to Rule 36 FRCP, the undersigned, attorney for the plaintiffs in constituent action 73 Civil 4133, demands that you furnish, in accordance with the provisions of such Rule, written response to the foregoing demand within thirty (30) days from the date of the service of this Demand upon you.

The matters upon which admission is requested are as follows:

1. That on January 3rd, 1973 (the date of the Amended Complaint filed by the plaintiffs in constituent action 73 Civil 4133) GARY MICHAEL was not named as a plaintiff in the caption of the action as set forth in said Amended Complaint.

2. That on February 21st, 1974 the Court, on the application of the defendant TOUCHE ROSS, and without opposition

by the plaintiffs in constituent action 73 Civil 4133, extended the time for the defendant TOUCHE ROSS to answer the Amended Complaint until thirty (30) days after answers to the pending interrogatories were served.

3. As a consequence of the said Order, prior to July 11th, 1974 (the date of service of first answers to the First Interrogatories of the defendant TOUCHE ROSS), the plaintiffs were not in default of any requirement under the Federal Rules of Civil Procedure with respect to service of Interrogatory Answers.

4. That, on January 3rd, 1973 and subsequent thereto, GARY MICHAEL was not a plaintiff in constitutent action 73 Civil 4133.

5. That on September 3rd, 1974 MARTIN RANDLOPH, one of the plaintiffs herein, executed Further Answers to Interrogatories, in accordance with the prior Order of this Court, and mailed the said Answers to his attorney (I.WALTON BADER, Esq.).

6. That, pursuant to normal post-office transmission times, these answers should have reached the office of the plaintiffs' attorney on the First Mail Delivery on September 5th, 1974.

7. That, on September 5th, 1974 the Secretary of the plaintiffs' attorney, DOROTHY BLACKER, had been notified of the termination of her employment on December 31st, 1974 and was, in fact, so terminated on said date.

8. That, on September 5th, 1974 the Office Receptionist at the office of the plaintiffs' attorney, at 274 Madison Avenue, New York, N.Y. had poor eyesight.

9. That, on September 5th, 1974 the last mail

delivery to 274 Madison Avenue, New York, N.Y. was made by one VINCENT J. LA PORTA.

10. That the mail contained in said last mail delivery was delivered by Mr. LaPorta to the Office Receptionist at 274 Madison Avenue, New York, N.Y.

11. That subsequent to September 5th, 1974 the attorney for the plaintiffs herein (I.WALTON BADER, ESQ.) terminated his partnership relationship with the firm of RICHARDS & GEIER (with whom the said Office Receptionist was connected) and that said termination was duly known to the other partner of said firm.

12. That about August 30th, 1974 MICHAEL FAGAN (one of the plaintiffs in constituent action 73 Civil 4133) executed Further Answers to Interrogatories which were in all respects identical to the unverified answers served on September 5th, 1974.

13. That on May 13th, 1976 the plaintiff MICHAEL FAGAN duly executed identical answers to those served September 5th, 1974 and said answers were filed with the Clerk of this Court.

14. That on May 21, 1976 GARY MICHAEL executed an affidavit ratifying the unverified interrogatory answers served on September 5th, 1974 and the said affidavit was duly filed with this Court.

15. In May 1974 GARY MICHAEL filed supplemental answers to interrogatories which explained the changes made by the said GARY MICHAEL to the unverified answers served September 5th, 1974.

16. On September 16th, 1974 GARY MICHAEL executed Further Answers to Interrogatories which were served upon the attorneys for all defendants. These answers were in all respects

identical to the Further Answers served on September 5th, 1974 except that the residence address of GARY MICHAEL was changed (he had moved in the interim) and the Trade Date of the purchase of the stock was given rather than the Settlement Date.

17. On September 5th, 1974 there were served upon the attorneys for the defendant TOUCHE ROSS unverified draft copies of interrogatory answers of the plaintiffs.

18. On September 10th, 1974 the attorneys for the defendant TOUCHE ROSS received duly verified copies of Interrogatory Answers to the Plaintiffs IIPL and MARTIN RANDOLPH.

19. The said duly verified copies of interrogatory answers were duly filed with the Clerk of the United States District Court for the Southern District of New York.

20. Prior to September 5th, 1974 the attorney for the plaintiffs (I.WALTON BADER) had received all necessary information which would have permitted him to prepare proper Further Answers to Interrgatories.

21. That the plaintiffs IIPL and RANDOLPH have executed Powers of Attorney giving the said I.WALTON BADER authority to execute interrogatory answers in their behalf.

22. The defendant TOUCHE ROSS AND COMPANY, despite the fact that fully verified answers to interrogatories were claimed not to be filed within the time required by Court Order has suffered no prejudice with respect thereto and has submitted no evidence showing any such prejudice.

23. On October 9th, 1974 a Notice of Voluntary Dismissal was filed with respect to the plaintiff RANDOLPH with the Clerk of the United States District Court for the Southern District of New York. This Notice was "so ordered" by Judge Mac Mahon on October 15th, 1974.

24. On October 17th, 1974 a Notice of Voluntary Dismissal was filed with respect to the plaintiff MICHAEL FAGAN and with respect to GARY MICHAEL. This Notice was not "so ordered" by the Court.

25. On October 18th, 1974 a Notice of Rejection of the said October 17th, 1974 Notice of Voluntary Dismissal was served by the attorneys for TOUCHE ROSS upon the alleged ground that they had been involuntarily dismissed by Judge Owen on September 20th, 1974.

26. On October 28th, 1974 a Notice of Voluntary Dismissal was served by the plaintiffs IIPL, RANDOLPH and MICHAEL FAGAN (and with respect to GARY MICHAEL). This notice was "so ordered" by the Court on January 23rd, 1976.

27. Prior to November 2nd, 1976, the attorney for the defendant TOUCHE ROSS (Lawrence R. Eno, Esq.) failed to inform the attorney for the plaintiffs in constituent action 73 Civil 4133 of any of the following matters.

A. That HON. RICHARD OWEN, United States District Judge, had, prior to his appointment in December 1973, appeared for an interview before the full committee on the Judiciary of the Association of the Bar of the City of New York. That, at the time of such interview, LAWRENCE R. ENO, the attorney for TOUCHE ROSS, had been a member of that Committee.

B. That the purpose of such interview was to explore the qualifications of the said RICHARD OWEN to be a Judge of the United States District Court for the Southern District of New York.

C. That the said LAWRENCE R. ENO had also met Judge Owen on various social occasions, including two meetings at certain operas and one meeting at a public function.

28. That the said LAWRENCE R. ENO has failed to respond to further correspondence seeking details upon the now disclosed matters set forth in item "27" above.

29. That the said LAWRENCE R. ENO filed a false affidavit which stated inter alia that the Answers of IIPL and the Answers of RANDOLPH, FAGAN and MICHAEL arrived in the same envelope.

30. That the said LAWRENCE R. ENO knew that said affidavit was false at least prior to the date at which the admission was made.

31. That the said LAWRENCE R. ENO knew that said affidavit was false prior to November 9th, 1974.

32. That the said LAWRENCE R. ENO knew that on September 20th, 1974 the said attorney for the plaintiffs in constituent action 73 Civil 4133 had stated to the District Court that SANDS was in his office on September 9th, 1974.

Dated : November 24th, 1974

yours, etc.

BADER and BADER
Attorneys for Plaintiffs
in 73 Civil 4133
65 Court Street
White Plains N.Y. 10601

AFFIRMATION OF SERVICE

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, a member of the Bar of the State of New York, hereby states under penalties of perjury that on November 24th, 1976 he served a copy of the foregoing DEMAND FOR ADMISSIONS upon ROSENMAN, COLIN, etc., attorneys for the defendant TOUCHE ROSS, by mail.

Dated : November 24th, 1976

I.Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et al., Plaintiffs,	
-against-	73 Civil 3929 (VLB)
TELEPROMPTER CORP., et al., Defendants.	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LAWRENCE R. ENO, being duly sworn, deposes and says:

I am a member of the firm of Rosenman Colin Freund Lewis & Cohen, attorneys for defendant Touche Ross & Co. ("Touche Ross"). I have been the partner in charge of the matter of "Independent Investor Protective League, et al. v. Teleprompter Corp., et al." (73 Civ. 4133) on behalf of Touche Ross. I am also the person on whom the subpoena duces tecum, which is a subject of this motion, was served at about 4:00 p.m. on December 15, 1976 (Exhibit C annexed to the affidavit of Gerald Walpin, Esq.).

I acted on behalf of Touche Ross in the proceedings before Hon. Richard Owen, U.S.D.J., which led to the entry of his order of January 9, 1976 (Exhibit E annexed to Mr. Walpin's affidavit). The facts leading up to the entry of that order are set forth in Exhibit F, pp. 3-24, to Mr. Walpin's affidavit, and will not be repeated here. As there noted, Judge Owen found that I. Walton Bader, Esq., the

attorney for the plaintiffs in 73 Civ. 4133, had presented a "concocted story" to the Court; that he had engaged in deceptive practice; and that he had made false statements and gave false testimony to deceive the Court and counsel. Judge Owen imposed monetary sanctions against Mr. Bader and one of the plaintiffs (the amount of which has not yet been fixed) and also stated that he was referring the record for further consideration of Mr. Bader's conduct pursuant to Rule 5(f) of the General Rules of the Court dealing with disciplinary proceedings.

In retaliation for my proceeding with the matter before Judge Owen, Mr. Bader has since engaged in a malicious vengeful campaign to impugn my integrity by making, and repeating, a series of untrue statements about me. Beginning with the papers filed with Judge Owen after the evidentiary hearing in November 1974, Mr. Bader has charged me with forgery, with altering evidence, with having made false affidavits, with having given false testimony, with having made deliberate misrepresentations, with having wilfully violated orders of the Court, and the like. Such statements began to be made in Mr. Bader's papers before Judge Owen after our post-hearing memorandum had demonstrated Mr. Bader's culpability on the basis of the record facts (see Exhibit F, pp. 3-24, to Mr. Walpin's affidavit). Such statements were repeated in large part in Mr. Bader's papers on his appeal to the Court of Appeals from Judge Owen's order. They were also repeated in his papers on his successive motions before Judge MacMahon. Indeed, on that latter motion, Mr. Bader moved the Court to consider "the conduct of the attorney for the defendant

Lawrence R. Eno in this matter and taking such action with respect thereto as may be justified under the circumstances".

All of Mr. Bader's irresponsible charges have been answered by me and all of them have been shown to be without substance. An example of the nature of Mr. Bader's charges, and of their refutation, appears at pp. 39-41 of Exhibit F to Mr. Walpin's affidavit.

The instant attempt to take my deposition is but a continuation of that campaign of vituperation and harassment, except that it is now broadened to an attempt to retaliate against Judge Owen by impugning his integrity as well. This new phase of the campaign was initiated by a letter dated October 22, 1976 (postmarked October 25, 1976 and received October 26, 1976) to me from Mr. Bader. A copy of that letter is annexed hereto as Exhibit 1.

In that letter, Mr. Bader claimed that, in his "absence from the office", he had received a telephone message from a person who identified himself as "Jack Le Clair" who wanted to tell Mr. Bader that I was "personally acquainted" with Judge Owen. [This "unknown caller" is reminiscent of the "unknown mailer" who mailed the copies of interrogatories on September 5, 1974 in Mr. Bader's "absence from the office" and who turned out to be, as Judge Owen found, Mr. Bader himself. See Exhibit E, p. 16, ftn. 15, to Mr. Walpin's affidavit.] In the letter, Mr. Bader asked me to tell him if I was "personally acquainted" with Judge Owen and the extent of my "personal acquaintance".

On November 2, 1976, I responded to Mr. Bader's letter. A copy of my response is annexed hereto as Exhibit 2. In that letter, I noted that at the first conference with Judge Owen of all counsel in January 1974, Judge Owen had greeted me and referred to the fact that we had met as adversaries many years before in the case of "Kaiser-Frazer Corporation v. Otis & Co."

In the letter I went on to describe that case, which was begun in 1948, and stated that I believed that my last contact with Judge Owen in that case was in 1951. I then went on to state:

> "In the 25 years since 1951, outside of appearances before him in connection with the instant action, I recall seeing Judge Owen on no more than four occasions when we simply exchanged pleasantries: once when he appeared for an interview before the full Committee on the Judiciary of the Association of the Bar of the City of New York, of which I was then a member; twice by chance between acts at the opera; and once at a function where a large number of other persons were present."

Apparently Mr. Bader could find nothing in the answer to predicate the challenge to Judge Owen for which he was obviously searching. Accordingly, he sent me another letter dated November 5, 1976. A copy of that letter is annexed hereto as Exhibit 3. In that letter, Mr. Bader asked a series of questions which made evident his purpose to continue his endless harassment. These questions, said Mr. Bader in a letter dated November 19, 1976 (copy annexed hereto as Exhibit 4), were also to be answered with respect to "any agent or member of your firm". The questions put to me were as follows:

"1. To your best recollection what were the dates, times, and places of each and every communication that you had with Judge Owen, whether such communications were personal, by telephone, or by written communication.

"2. Are there copies of such written communications in your possession and, if so, where can I inspect them.

"3. At each meeting that you had with judge (sic) Owen, to the best of your recollection, what was discussed.

"4. Did you and Judge Owen, other than the meetings set forth in your November 2, 1976 letter, have any telephone conversations and, if so, what were the dates, times and places of such telephone conversations and what was discussed between you.

"5. What were the circumstances of the interview that Judge Owen had with the full Committee of the Judiciary of the Association of the Bar of the City of New York.

"6. What was the date of the interview.

"7. What was discussed at the interview.

"8. Is there any written transcript of the proceedings at the interview, and, if so, where can such a transcript be obtained.

"9. Did the Judiciary Committee of the Bar Association of the City of New York make any recommendation after such interview. If so, is there a copy of such recommendation and where could I obtain the same.

"10. Who were the other members of the Committee.

"11. Was the recommendation made by the Committee unanimous or were there dissenting recommendations and, if so, what recommendation did you make.

"12. What was the name of the opera that you attended where you met Judge Owen and what was the date of the meeting.

"13. What was the function at which you met Judge Owen where a large number of other persons were present and what was the date of this function.

"Since I do not recall Judge Owen making any statement in January 1974 that you and he had met as adversaries in the case of Kaiser-Frazer Corporation vs. Otis & Company I would appreciate knowing if you have any notes of what was said at that meeting and whether I could receive a copy of such notes.

"Finally, please explain to me why you did not disclose to me the circumstances of your relationship with Judge Owen, and particularly the interview had by Judge

Owen with the full Committee on the Judiciary of the Association of the Bar of the City of New York at the commencement of the proceedings before Judge Owen or at any time until this matter was called to your attention by my October 22nd letter."

On November 24, 1976, I sent Mr. Bader my response (a copy of which is annexed hereto as Exhibit 5), which read as follows:

> "Our letter of November 2, 1976 in response to yours of October 22, 1976 would have satisfied any legitimate inquiry. Accordingly, we do not propose to respond to your further demands."

Under date of November 30, 1976, Mr. Bader sent me another letter (a copy of which is annexed hereto as Exhibit 6) in which he gave me one week to respond to his demands or else.

Then, under postmark of December 5, 1976, Mr. Bader sent me a copy of a letter dated December 7, 1976, from him to Judge MacMahon. A copy of that letter is annexed hereto as Exhibit 7. In that letter, to which the prior correspondence was apparently attached, Mr. Bader complained that I was, to use his term, "stonewalling" him; that the matter was one of great "sensitivity" (obviously because Mr. Bader intended to reflect on Judge Owen); that he wanted a conference with Judge MacMahon and that he would otherwise proceed by way of discovery against me. Apparently Judge MacMahon did not believe the matter required consideration, and, by his order of December 8, 1976 (Exhibit D to Mr. Walpin's affidavit), he referred Mr. Bader's letter to Judge Owen.

It is quite apparent that after two years, Mr. Bader's campaign against me is running out of fuel and he is looking

about for new material so that he can keep plaguing me and, incidentally -- or not so incidentally, Judge Owen. That should not be permitted and the relief sought on this motion should be granted.

Lawrence R. Eno
Lawrence R. Eno

Sworn to before me this
20th day of December, 1976.

Marlene Herman

MARLENE HERMAN
NOTARY PUBLIC, State of New York
No. 41-0157365
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1978

885

Rec'd 10/26/76

AREA CODE 212
LEXINGTON 2-6860

CABLE ADDRESS: "BAPATENTS" NEW YORK
TELEX: BABKLN 666244 UW

LAW OFFICES
BADER AND BADER
65 COURT STREET
WHITE PLAINS, N. Y. 10601

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER
BENEDICT BADER (MASS. BAR).

REPRESENTED IN WASHINGTON, D. C.

October 22nd, 1976

Re: Lewis vs. Teleprompter
73 Civil 3929

Lawrence R. Eno, Esq.
Rosenman, Colin, etc.
575 Madison Avenue
New York, N.Y. 10022

Dear Mr. Eno,

The undersigned has received a telephone message, in my absence from the office, by an individual who identified himself as "Jack Le Clair". This individual stated that he had read the opinion of the Court of Appeals in the "Independent Investor against Touche Ross" case and that he wanted to tell me that he knows that you are personally acquainted with Judge Owen.

Since I have no knowledge of this fact, and I do not wish to make any statements which are not completely and factually correct I would appreciate your informing me if, in fact, you are personally acquainted with Judge Owen and the extent, if any, of your personal acquaintance.

If the above statement is incorrect I also would appreciate knowing the same.

I do not intend to make unsupported statements before the Court but, if the above statement is true, then I believe that such fact would be material in this case and should be brought out.

IWB/iwb

Very truly yours,

I. Walton Bader

I. Walton Bader

ROSENMAN COLIN FREUND LEWIS & COHEN

575 MADISON AVENUE NEW YORK, N.Y. 10022

MAX FREUND
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE H. ENG
MURRAY COHEN
WILLIAM N. GOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOKOLOW
MAURICE H. GOETZ
SAMUEL H. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE GORDON
LAWRENCE S. SUTTENWIESER
EUGENE L. MODEL
GERALD WALPIN
MAX L. BARASCH
F. PAUL SURRA
ROBERT J. COWEN
TERESA SCHMALL
PETER F. NAGEL
LEE J. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN
ROBERT H. GOTTLIEB
MARK I. FISHER
JOSEPH L. GETRAER
LAWRENCE D. GOLDE
NORMAN J. ITZKOFF

SAMUEL I. ROSENMAN
1896-1973

RALPH F. COLIN
SYDNEY M. KAYE
WALTER J. PETSCHEK
EDWARD F. ROSINY
COUNSEL

TELEPHONE (212) 644-7000
CABLE ROCOKAY NEWYORK
TELECOPIER (212) 644-6999
TELEX 12-5745

WRITER'S DIRECT DIAL NUMBER
644-6900

November 2, 1976

I. Walton Bader, Esq.
65 Court Street
White Plains, New York 10601

Re: Independent Investor Protective League et al. v. Teleprompter Corporation, et al.
73 Civ. 4133

Dear Sir:

This will acknowledge receipt of your letter dated October 22, 1976, postmarked October 25, 1976, and received October 26, 1976.

We are sure that your reference is to the first conference with Judge Owen with all counsel in January 1974 when he greeted me and referred to the fact that we had met as adversaries many years before in the case of "Kaiser-Frazer Corporation v. Otis & Co."

That action was begun in 1948. Judge Owen was an associate in the office of the attorneys for Kaiser-Frazer, and was the most junior of about five attorneys associated with the prosecution of the case on behalf of Kaiser-Frazer. I was then associated in defense of the action on behalf of Otis & Co. I believe my last contact with Judge Owen in that case was in 1951.

In the 25 years since 1951, outside of appearances before him in connection with the instant action, I recall seeing Judge Owen on no more than four occasions when we simply

exchanged pleasantries: once when he appeared for an interview before the full Committee on the Judiciary of the Association of the Bar of the City of New York, of which I was then a member; twice by chance between acts at the opera; and once at a function where a large number of other persons were present.

Copies of your letter and of this letter are being sent to Judge Owen.

Very truly yours,

Lawrence R. Eno

Lawrence R. Eno

LRE:rmr

CODE 212
TON 2-6860

CABLE ADDRESS: BAPATENTS NEW YORK
TELEX: BABKLN 666244 UW

LAW OFFICES
BADER AND BADER
65 COURT STREET
WHITE PLAINS, N. Y. 10601

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER
BENEDICT BADER (MASS. BAR)

REPRESENTED IN WASHINGTON, D. C.

Rec'd 11/8/76

November 5th, 1976

Re: Lewis vs. Teleprompter

CONFIDENTIAL

Lawrence R. Eno, Esq.
Rosenman, Colin, Freund, Lewis & Cohen
575 Madison Avenue
New York, N.Y. 10022

Dear Mr. Eno,

I have your letter of November 2nd, 1976.

Before taking a position in this matter, in view of the disclosures contained in your letter of November 2nd, I believe that I am entitled to full and complete information with respect to all of your contacts, whatever they may be, with Judge Owen. To elicit full disclosure I require the following:

1. To your best recollection what were the dates, times, and places of each and every communication that you had with Judge Owen, whether such communications were personal, by telephone, or by written communication.

2. Are there copies of such written communications in your possession and, if so, where can I inspect them.

3. At each meeting that you had with judge Owen, to the best of your recollection, what was discussed.

4. Did you and Judge Owen, other than the meetings set forth in your November 2, 1976 letter, have any telephone conversations and, if so, what were the dates, times and places of such telephone conversations and what was discussed between you.

5. What were the circumstances of the interview that Judge Owen had with the full Committee of the Judiciary of the Association of the Bar of the City of New York.

6. What was the date of the interview.

7. What was discussed at the interview.

8. Is there any written transcript of the proceedings at the interview, and, if so, where can such a transcript be obtained.

9. Did the Judiciary Committee of the Bar Association of the City of New York make any recommendation after such interview. If so, is there a copy of such recommendation and where could I obtain the same.

10 Who were the other members of the Committee.

11. Was the recommendation made by the Committee unanimous or were there dissenting recommendations and, if so, what recommendation did you make.

12. What was the name of the opera that you attended where you met Judge Owen and what was the date of the meeting.

13. What was the function at which you met Judge Owen where a large number of other persons were present and what was the date of this function.

Since I do not recall Judge Owen making any statement in January 1974 that you and he had met as adversaries in the case of Kaiser-Frazer Corporation vs. Otis & Company I would appreciate knowing if you have any notes of what was said at that meeting and whether I could receive a copy of such notes.

Finally, please explain to me why you did not disclose to me the circumstances of your relationship with Judge Owen, and particularly the interview had by Judge Owen with the full Committee on the Judiciary of the Association of the Bar of the City of New York at the commencement of the proceedings before Judge Owen or at any time until this matter was called to your attention by my October 22nd letter.

Very truly yours,

IWB/iwb

I.Walton Bader

AREA CODE 212
LEXINGTON 2-6880

890

CABLE ADDRESS: "BAPATENTS" NEW YORK
TELEX: BABKLN 666244 UW

LAW OFFICES
BADER AND BADER
65 COURT STREET
WHITE PLAINS, N. Y. 10601

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER
BENEDICT BADER (MASS. BAR)

REPRESENTED IN WASHINGTON, D. C.

November 19th, 1976

Re: Lewis vs. Teleprompter

Lawrence R. Eno, Esq.
Rosenman Colin, etc.
575 Madison Avenue
New York NY 10022

Dear Mr. Eno,

I have not yet received a reply to my letter of November 5th, 1976 (copy enclosed).

In replying thereto please note that the questions also relate to any communications between any agent or member of your firm and Judge Owen.

May I hear from you in this matter as soon as possible.

Very truly yours,

I. Walton Bader

IWB/iwb

Exhibit 4

ROSENMAN COLIN FREUND LEWIS & COHEN

575 MADISON AVENUE NEW YORK, N.Y. 10022

MAX FREUND
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
WILLIAM W. OOLUB
MANUEL MAXWELL
ANDREW J. SCHOEN
JACK E. BRONSTON
ASA D. SOROLOW
MAURICE H. GOETZ
SAMUEL M. LINDENBAUM
GILBERT S. EDELSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE B. SUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
HAL L. BARASCH
H. PAUL BURAK
EDWARD H. COHEN
FLORA SCHWALL
PETER F. NADEL
LEE M. ROBINSON
FRANK R. ROSINY
JOSEPH ZUCKERMAN
ROBERT M. GOTTLIEB
MARK I. FISHER
JOSEPH L. GETRAER
LAWRENCE G. GOLOE
NORMAN J. ITZKOFF

SAMUEL I. ROSENMAN
1880-1973

RALPH F. COLIN
SYDNEY M. FAYE
WALTER J. PETSCHEK
EDWARD F. ROSINY
COUNSEL

TELEPHONE (212) 644-7000
CABLE ROCOKAY NEWYORK
TELECOPIER (212) 644-6669
TELEX 12-5745

WRITER'S DIRECT DIAL NUMBER
644-6900

November 24, 1976

I. Walton Bader, Esq.
65 Court Street
White Plains, New York 10601

Dear Sir:

Our letter of November 2, 1976 in response to yours of October 22, 1976 would have satisfied any legitimate inquiry. Accordingly, we do not propose to respond to your further demands.

Very truly yours,

Lawrence R. Eno

LRE/mk

Lawrence R. Eno

AREA CODE 212
LEXINGTON 2-6860

892

Rec'd 12/2/76

CABLE ADDRESS: "BAPATENTS" NEW YORK
TELEX: BABKLN 666244 UW

LAW OFFICES
BADER AND BADER
65 COURT STREET
WHITE PLAINS, N. Y. 10601

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
WALTON BADER
BENEDICT BADER (MASS. BAR).

REPRESENTED IN WASHINGTON, D. C.

November 30th, 1976

Re: Lewis vs. Teleprompter
Civil Action 73 Civil 3929 LFM

Lawrence R. Eno, Esq.
Rosenman Colin, etc.
575 Madison Avenue
New York NY 10022

Dear Mr. Eno,

I have your letter of November 24th, 1976.

In view of your refusal to supply information which I believe is relevant to the issues in the above action and which I felt should be kept out of the formal record of this case until all of the facts were known, I now have no alternative to take the necessary formal proceedings to secure the information involved.

In order to give you a chance to reconsider your position I inform you that I will take no action for one week to permit you to reply to my letter of November 5th, 1976.

In the event that you persist in your position I shall do what I believe is necessary to protect my clients' interests.

Very truly yours,

I. Walton Bader

IWB/iwb

Rec'd 12/6/76

AREA CODE 212
LEXINGTON 2-6860

893

CABLE ADDRESS "BAPATENTS" NEW YORK
TELEX BABKLN 666244 UW

LAW OFFICES
BADER AND BADER
65 COURT STREET
WHITE PLAINS, N. Y. 10601

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER
BENEDICT BADER (MASS. BAR)

REPRESENTED IN WASHINGTON D. C.

December 7th, 1976

Re: Lewis vs. Teleprompter
Civil Action 73 Civil 3929 LFM

Hon. Lloyd F. MacMahon
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, N.Y. 10007

Dear Judge MacMahon,

It has now been belatedly revealed to me, (after the information was conveyed to me by a telephone call received from a third party) that the attorney for the defendant TOUCHE ROSS is personally acquainted with Judge Owen as follows:

1. He served on the Judiciary Committee of the Association of the Bar of the City of New York before whom Judge Owen appeared for interview as to his qualifications for the bench prior to his appointment.

2. He met with Judge Owen on at least three occasions, twice at the opera and once at a public function.

3. These matters occurred prior to the proceedings before Judge Owen which are the subject matter of motions before Your Honor.

The full facts with respect to the scope of the acquaintance between Mr. Eno, other members of his firm, and Judge Owen has not been revealed to me. Because of the sensitivity of the problem I attempted to ascertain these facts informally without the intervention of the Court, or the use of formal Discovery Processes, and without making of Public Record of the actions taken.

My attempted proceedures have been resisted by Mr. Eno who has "stonewalled" my efforts to obtain further information. The relevant correspondence between us is enclosed with this letter for the Court's information.

Because of my past relationships with Mr. Eno, and his apparent willingness to accuse me of improper conduct, I feel that a problem of this sensitivity requires that I

EXHIBIT 7

inform the Court, in advance, of the steps that I intend to take to obtain the necessary information, obtain clearance from the Court in advance, and attempt to arrange an informal conference with the Court prior to taking formal steps under the Discovery Rules.

I intend to take the deposition of Mr. Eno in connection with the Motions before Your Honor and issue a Subpoena for the documents to which I believe that I am entitled. I feel that this information is vital to be before the Court prior to the making of a decision on the pending motion before the Court under Rule 60(b)., etc.

I would hope that this step will not be forced upon my and that Mr. Eno will voluntarily give me the information I seek. Therefore I would appreciate a conference before the Court prior to my taking formal discovery steps.

I owe the duty to my clients to obtain full disclosure of the facts involved and hope that the Court will grant me the conference that I seek.

I am sending a copy of this letter and the enclosures to Mr. Eno for any comments that he may see fit to make.

Respectfully,

I. Walton Bader

IWB/iwb
cc: Mr. Eno.

7

UNITED S
SOUTHERN

HARRY LE

-a

TELEPROM

ORDER TO
AFFIDAVI

Rosenmar

Attorneys for

Ne

73 Civ. 3929 (VLB)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

ORIGINAL
ORDER TO SHOW CAUSE AND AFFIDAVITS

Rosenman Colin Freund Lewis & Cohen

Attorneys for Defendant Touche Ross & Co. and Lawrence R. Eno

575 Madison Avenue
New York, New York 10022
(212) 644-7000

Compliance with Superior Court Rules, and filing of depositions provided for in Rule of deposition, stayed on consent until the determination of this motion matter, together with supporting papers, referred to Judge Richard Owen. Attorneys for plaintiff have agreed to serve answering papers by Dec. 30, 1976.

12/22/76 [illegible] U.S.D.J.

U.S. DISTRICT COURT
FILED
DEC 22 1976
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

HARRY LEWIS et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

73 Civil 3929
(VLB)

OBJECTIONS TO SUBPOENA DUCES TECUM

- -x

Pursuant to the provisions of Fed. R. Civ. P. 45(d)(1), Lawrence R. Eno objects to the inspection or copying of any and all of the materials designated in a subpoena duces tecum dated December 14, 1976 (copy of which is annexed hereto).

The grounds of such objection include irrelevance and attorney-client privilege, as well as the grounds set forth in papers served on behalf of said Lawrence R. Eno in support of a motion pursuant to Fed. R. Civ. P. 26(c) and 45 inter alia to quash said subpoena.

Dated: December 20, 1976.

ROSENMAN COLIN FREUND LEWIS & COHEN

By _____
A Member of the Firm
Attorneys for Lawrence R. Eno
575 Madison Avenue
New York, New York 10022
644-7000

TO: BADER & BADER, ESQS.
65 Court Street
White Plains, New York 10601

DEPOSITION SUBPOENA TO TESTIFY OR PRODUCE DOCUMENTS OR THINGS (Revised 11-73) D.C. Form No. 9

United States District Court

FOR THE

Southern District of New York

CIVIL ACTION FILE NO.

HARRY LENIS

vs.

TELEPROMPTER CORP et al

73 Civil 3929

TO

LAWRENCE R. ENO, 575 MADISON AVE NY, NY 10022

YOU ARE COMMANDED to appear at the office of the clerk of this court Ground Floor, Foley Square New York NY in the city of on the 22 day December, 1976, at 10 o'clock A. M. to testify on behalf of plaintiffs 11PL, etc. in consolidated action 73 Civil 3133

at the taking of a deposition in the above entitled action pending in the United States District Court for the Southern District of New York and bring with you:

1. Telephone Logs from Sept 5 1974 to date
2. Payroll & employment records from Sept 5 1974 to date
3. Minutes of meeting of Judiciary Committee of the City Bar Assn at which Judge Owen appeared for interview
4. Tickets to opera performances and function at which you met Judge Owen

Dated Dec 14, 1976

BOOER & BOOER
Attorney for 11PL etc.
65 Court Street
Address White Plains NY 10601

RAYMOND F. BURGHARDT, Clerk
By M. C. Bauer Clerk.
Deputy Clerk.

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30 (b) (6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

1. Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.

RETURN ON SERVICE

Received this subpoena at on
and on at
served it on the within named
by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law.[2]

Dated: _____, 19____

_____,

By _____

Service Fees
Travel _____ $ _____
Services _____

Total _____ $

Subscribed and sworn to before me, a this
day of 19

_____

2. Fees and mileage need not be tendered to the w[illegible] service of a subpoena issued in behalf of the United States or an [illegible]ficers or agency thereof, or upon service of a subpoena issued on behalf of a party, authorized to proceed in forma pauperis, where the payment thereof is to be made by the United States marshal, as authorized in sec. 825 of title 28, U.S.C.

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

GPO 797-632

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

HARRY LEWIS et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP. et al.,

Defendants.

73 Civil 3929
(VLB)

OBJECTIONS TO
REQUEST FOR
ADMISSIONS

- -x

Defendant Touche Ross & Co. ("Touche Ross") objects to the "Demand for Admissions Pursuant to Rule 36 Federal Rules of Civil Procedure" dated "November 24, 1974" (sic), served upon the attorneys for said defendant by mail, postmarked November 25, 1976, on the following grounds:

1. If said "Demand" is intended for use in the above entitled consolidated action, it has been served in violation of the consolidation order dated November 18, 1974 (par. 3), and the parties on whose behalf said "Demand" was served, and their attorneys, Bader & Bader, may not serve said "Demand" in said consolidated action.

2. If said "Demand" is intended for use in the action entitled Independent Investor Protective League et al. v. Teleprompter Corp. et al. (73 Civ. 4133) as it remained before Hon. Richard Owen, U.S.D.J., by an order dated January 9, 1976 that action has been dismissed with prejudice as to Touche Ross and the parties on whose behalf said "Demand" was served, and their attorneys, Bader & Bader, may not serve said "Demand" upon Touche Ross in that action.

3. The requests set forth in said "Demand" are ir-

relevant and immaterial, do not relate to any issues raised by the pleadings, and no evidence thereof would be admissible upon the trial of either action.

4. The requests do not deal with matters that may properly be inquired into pursuant to Fed. R. Civ. P. 36(a).

5. Said "Demand" is objectionable on the grounds set forth in papers served on behalf of Touche Ross in support of a motion pursuant to Fed. R. Civ. P. 26(c) and 45 with respect to a notice of deposition and subpoena duces tecum, each dated December 14, 1976, served by Bader & Bader as attorneys for "Plaintiffs IIPL etc.".

Dated: December 20, 1976.

ROSENMAN COLIN FREUND LEWIS & COHEN

By _____
A Member of the Firm
Attorneys for defendant Touche Ross & Co.
575 Madison Avenue
New York, New York 10022
212-644-7000

TO: BADER & BADER, ESQS.
65 Court Street
White Plains, New York 10601

990

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEC 21 11 03 AM '76
S.D. OF N.Y.
FILED
S. DISTRICT COURT

HARRY LEWIS

Plaintiff

against

Civil Action
73 Civil 3929 ~~LPM~~

TELEPROMPTER CORPORATION et. al.

Defendants

NOTICE OF FILING OF POWER OF ATTORNEY
NUNC PRO TUNC BY PLAINTIFF MICHAEL
FAGAN

NOTICE IS HEREBY GIVEN that the within Power of Attorney, nunc pro tunc is being filed in connection with constituent action 73 Civil 4133. This filing is being made in connection with the pending Rule 60(b) Motion with respect to constituent action 73 Civil 4133.

Dated : December 21st, 1976

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
IIPL etc.
65 Court Street
White Plains New York 10601

AFFIRMATION OF SERVICE

STATE OF NEW YORK
COUNTY OF WESTCHESTER ss:

I.WALTON BADER, a member of the Bar of the State of New York, hereby states under penalties of perjury that on December 21st 1976 he served a copy of the within Notice and annexed Power of Attorney by mail addressed to ROSENMAN,COLIN,etc., Attorneys for defendant TELEPROMPTER CORPORATION at 575 Madison Avenue, New York, N.Y. by mail deposited in a post-office box on Martine Avenue, White Plains, New York.

Dated : December 21st, 1976

I.Walton Bader

W 51—Statutory Short Form of General Power of Attorney.
Disability Clause, if not desired cross out:
With Affidavit of Attorney, Gen. Obl. Law §5-1501: 3-76

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS,
80 EXCHANGE PL. AT BROADWAY, N. Y. C. 10004

Notice: The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned.

Know All Men by These Presents, *which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:*

That I MICHAEL FAGAN of WATSON LANE, DANBURY CONN 06810
(insert name and address of the principal)

do hereby appoint I. WALTON BADER of 270 Madison Avenue, New York NY 10016
(insert name and address of the agent, or each agent, if more than one is designated)

my attorney(s)-in-fact TO ACT

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally". Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

First: in my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

[Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (K), inclusive, shall automatically constitute an elimination also of subdivision (L).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

(A) ~~real estate transactions~~ ..... [MFF]
(B) ~~chattel and goods transactions~~ ..... [MFF]
(C) ~~bond, share and commodity transactions~~ ..... [MFF]
(D) ~~banking transactions~~ ..... [MFF]
(E) ~~business operating transactions~~ ..... [MFF]
(F) ~~insurance transactions~~ ..... [MFF]
(G) ~~estate transactions~~ ..... [MFF]
(H) claims and litigation; ..... [ ]
(I) ~~personal relationships and affairs~~ ..... [MFF]
(J) ~~benefits from military service~~ ..... [MFF]
(K) ~~records, reports and statements~~ ..... [MFF]
(L) ~~all other matters~~ ..... [MFF]

[Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.]

Second: with full and unqualified authority to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select.

Third: This power of attorney shall not be affected by the subsequent disability or incompetence of the principal.

Fourth: To induce any third party to act hereunder, I hereby agree that any third party receiving a duly executed copy or facsimile of this instrument may act hereunder, and that revocation or termination hereof by operation of law or otherwise shall be ineffective as to such third party unless and until actual notice or knowledge of such revocation shall have been received by such third party, and I for myself and for my heirs, executors, legal representatives and assigns, hereby agree to indemnify and hold harmless any such third party from and against any and all claims that may arise against such third party by reason of such third party having relied on the provisions of this instrument.

In Witness Whereof, *I have hereunto signed my name and affixed my seal this.....*

day of December, *19* 76

Nunc Pro Tunc as of August 29th, 1974

X Michael Fagan (Seal)
(Signature of Principal)
Michael Fagan

STATE OF CONNECTICUT *COUNTY OF* FAIRFIELD *ss.:* Danbury

On the 15 *day of* December *19* 76 *before me personally came* MICHAEL FAGAN

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

X Samuel J. Wine
Notary Public

SAMUEL J. WINE
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1981

STATE OF , *COUNTY OF* *ss.:*

On the *day of* *19* *before me personally came*

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

AFFIDAVIT AS TO POWER OF ATTORNEY BEING IN FULL FORCE

STATE OF NEW YORK , *COUNTY OF* WESTCHESTER *ss.:*

I. WALTON BADER *being duly sworn, deposes and says:*

That Michael Fagan *as principal,*
who resides at Watson Lane, Danbury Conn.
did, in writing, under date of Dec. 15 1976, nunc pro tunc a/o Aug. 29, 1974 *appoint me his true and lawful attorney, and that annexed hereto, and hereby made a part hereof, is a true copy of said power of attorney.*

THAT, *as attorney in fact of said principal and under and by virtue of the said power of attorney,* ~~I have the power to execute and deliver the Answers to interrogatories~~ the Answers to interrogatories of MICHAEL FAGAN mailed September 5th, 1974 are, by reason thereof, deemed verified.

THAT *at the time of executing the above described instrument I had no actual knowledge or actual notice of revocation or termination of the aforesaid power of attorney by death or otherwise, or notice of any facts indicating the same.*

THAT *I hereby represent that the said principal is now alive; that he is now of sound mind; that he has not, at any time, revoked or repudiated the said power of attorney; and that the said power of attorney still is in full force and effect.*

~~THAT I have executed the above for the purpose of inducing~~

~~to accept delivery of the above described instrument executed by me in my capacity of attorney-in-fact of the said principal, with the full knowledge that the said~~

~~in accepting the execution and delivery of the aforesaid instrument and in paying good and valuable consideration therefor will rely upon this affidavit~~

I. Walton Bader

Sworn to before me
this 9th *day of* December *19* 76

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al., Plaintiffs,	73 Civ. 4133 (R.O.)
-against-	SATISFACTION OF JUDGMENT
TELEPROMPTER CORP., et al., Defendants.	

WHEREAS a mandate of the Court of Appeals determining an appeal (Second Circuit Docket No. 76-7027) from an order in the above-entitled action was filed in this Court on October 26, 1976, and was docketed as a judgment (Judgment No. 76,960) in the office of the Clerk of this Court on October 27, 1976, in favor of defendant Touche Ross & Co. and against plaintiff Independent Investor Protective League, plaintiff Martin F. Randolph, Jr. and I. Walton Bader, Esq., for costs on appeal in the sum of Eleven Hundred and Twenty and 52/100 Dollars ($1,120.52), and

WHEREAS, said judgment has been paid in full,

THEREFORE, satisfaction of said judgment is hereby acknowledged, and the Clerk of this Court is hereby authorized and directed to make an entry of satisfaction on the docket of said judgment.

Dated: New York, New York
December 27, 1976

ROSENMAN COLIN FREUND LEWIS & COHEN

By Lawrence R. Eno
A Member of the Firm
Attorneys for defendant Touche Ross & Co.

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

On the 27th day of December, 1976, before me personally came LAWRENCE R. ENO, to me known and known to me to be a member of the firm of Rosenman Colin Freund Lewis & Cohen, attorneys for defendant Touche Ross & Co. in the above entitled action, and to be the person who executed the within satisfaction of judgment, and acknowledged to me that he executed the same.

James K Vivline
Notary Public
[illegible] JR.
[illegible] New York
[illegible]
[illegible] New York County
Commission [illegible] 1978

Index No. Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, etc.

against

TELEPROMPTER CORP. etc.

MOTION TO DISMISS RULE 37
PROCEEDINGS AND FOR OTHER RELIEF

BADER AND BADER
Attorneys for Plaintiffs IIPL etc.
Office and Post Office Address, Telephone
5 Court Str, White Plains, New York
LExington 2-6860 New York, N. Y. 10016

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

VLB 73 Civ 3929

MEMORANDUM AND ORDER

The motion to vacate this Court's order of January 19, 1976 on the ground of "newly discovered evidence" is denied. In order for relief to be granted under this rubric, the failure to produce the evidence at the trial must not have been caused by the moving party's lack of due diligence. The evidence must be such as was not and could not by the exercise of diligence have been discovered in time to present in the original proceeding. It must be admissible and credible, and must be of such a material and controlling nature as will probably change the outcome, not be merely cumulative or tending to impeach or contradict a witness.

The material submitted by movants is essentially meaningless in nature, and all of it was available at or prior to the hearings in the exercise of due diligence. It is, therefore, not "newly discovered." United States v. Bronson, 142 F.2d 232, 235 (9th Cir. 1944).

To the extent that criticism is leveled at any attorney for defendant Touche Ross, I find it utterly unsupported; indeed, contradicted upon this record, and reject the criticism.

The motion to seal the record of these proceedings is denied. Attorne for movants, having taken appellate review essentially disclosing the contents of this record, has waived any justification for this relief. In sum, the motion for various items of relief is denied in its entirety.

So ordered.

MICROFILM
DEC 30 1976

December 28, 1976

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et. al.

Plaintiffs

against

Civil Action
73 Civil 3929 VLB

TELEPROMPTER CORP. et. al.

(Referred to Hon.
Richard Owen USDJ)

Defendants

AFFIRMATION IN OPPOSITION TO MOTION
BROUGHT ON BY ORDER TO SHOW CAUSE TO
VACATE NOTICE OF TAKING TESTIMONY AND
SUBPOENA UNDER RULES 26(c) and 45 FRCP

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I.WALTON BADER, being duly sworn, deposes and says:

I am a member of the Bar of the State of New York and make the statements contained in this affirmation under penalties of perjury. This document has the force of an affidavit under the Laws of the State of New York.

This affirmation is submitted in opposition to the application by the defendant TOUCHE ROSS and by its attorney LAWRENCE R. ENO to vacate a Notice of Taking Testimony served upon said parties and a subpoena issued in accordance with Rule 45FRCP on the witness LAWRENCE R. ENO.

It is respectfully submitted to this Court that the objections made herein are not well taken and should be overruled.

At the outset the Court is respectfully advised that there are presently the following applications pending before this Court in constituent action 73 Civil 4133.

1. An application pursuant to Rule 60(b) to vacate the Order and Opinion issued by this Court (OwenJ.) in January 1976 upon the ground of newly presented evidence.

2. An informal letter application to the Court (now referred to Owen J.) suggesting that the said District Judge recuse himself pursuant to the provisions of 28 USC 455 and Federal Rule of Evidence 605.

3. A proceeding before this Court (Owen J.) to fix the amount of alleged attorneys' fees expended by the defendant TOUCHE ROSS in prosecuting its application under Rule 37 FRCP that was granted by Judge Owen in January 1976.

4. An application to seal the record of this proceeding pending full Appellate Resolution of the matter in accordance with the suggestion of the Court of Appeals for the Third Circuit in Lowenschuss vs. West Publishing Company,--Fed(2nd) -- No. 75-2431 Decided September 16th,1976.

It is in connection with the applications set forth hereinabove that the Notice of Taking Testimony and Subpoena has been issued.

At the outset, the defendant TOUCHE ROSS and the prospective witness ENO claim that the proceedings are irregular. They claim that the Notice of Taking Testimony bears an affidavit of service of December 14th,1976 and that there were two Notices of Taking Testimony received by the defendant TOUCHE ROSS' attorneys, one postmarked December 15th,1976 from Panama City Florida and the other postmarked September 16th,1976 from White Plains New York. Both Notices were duly received on December 17th,1976 by said defendants' attorneys.

On December 14th,1976 a copy of the Notice of Taking Testimony was deposited in a post office box at the Panama City Florida airport by the undersigned and such deposit was wi nessed by one CHRISTOPHER J. BLASI. Another copy of the Notice of Taking

Testimony was deposited by the undersigned in a mail box at White Plains New York on December 16th,1976.

Such service is in full compliance with the affidavit of service annexed to the Notice of Taking Testimony which merely certifies that on December 14th,1976 a copy thereof was dispatched to the attorneys for the defendant TOUCHE ROSS by mail. Also, the document was received within the three day period provided for receipt of a mailed copy of a document under Rule 6(e) of the Federal Rules of Civil Procedure.

Apparently a third copy of the Notice of Taking Testimony was not received by the attorneys for the defendant TOUCHE ROSS. Rather than detail the circumstances of this third mailing in this affirmation the undersigned has requested an investigation from the Postal Service and, upon the completion this investigation and the Postal Service's report the Court will be further informed of the results. Until the circumstances with respect to this third mailing are fully investigated the undersigned will not, in view of the prior statements made by the Court as to the veracity of the undersigned, further detail the circumstances at this time.

It is also interesting to note the "nit picking" type of practice indulged in by the attorneys for the defendant TOUCHE ROSS in this action and the type of practice engaged in by the attorneys for the defendant TOUCHE ROSS (the fine firm of SHEA, GOULD, etc.) who represent this defendant in other actions wherein the undersigned represents the plaintiff. Annexed to this affirmation as "EXHIBTT A" and "EXHIBIT B" is a letter and a stipulation with respect to the Stern vs. Zale action wherein the undersigned not only agreed to an extension of time with Mr. Gold of the Shea,Gould firm BUT EVEN ALLOWED THAT FIRM TO SIGN THE UNDERSIGNED'S NAME TO THE EXTENSION STIPULATION.

Based upon the above facts, and the different type of practice conducted by the SHEA,GOULD and ROSENMAN COLIN firms in their representation of the same client, it might be possible that the ROSENMAN COLIN firm had no authorization to bring on the Rule 37 proceedings that resulted in the Court's determination in January 1976 and, in such case, the ROSENMAN COLIN firm would be entitled to no fees at all in the fee fixing proceedings before Judge Owen. Hence the undersigned should be entitled to examine the defendant TOUCHE ROSS to determine whether or not such authorization existed.

Also, in connection with a fee fixing application, the Court must find that the amount of such fees are reasonable and that the services performed were necessary and reasonable. Thus the undersigned is entitled to examine the defendant TOUCHE ROSS and its attorney ENO to discover these facts. It is also necessary to discover if the billing of the fees to TOUCHE ROSS was done in consideration of other services performed for TOUCHE ROSS for which no billing was made. Examination as to these issues is also necessary in this case.

We also find, in this action, that we now have the benefit of 20/20 hindsight. Thus, despite a period of more than two years having elapsed from the date of the incident involved herein on September 5th,1974 the defendant TOUCHE ROSS has shown no prejudice with respect to the late service of interrogatory answers. Indeed, even in the case of the plaintiff MICHAEL FAGAN, who filed answers nunc pro tunc long subsequent to September 5th,1974, the defendant TOUCHE ROSS has submitted no evidence whatsoever of any prejudice. In view of the fact that Powers of Attorney are now on file nunc pro tunc for all plaintiffs in this case the plaintiffs IIPL etc. are entitled to examine the defendant TOUCHE ROSS and its attorney to establish whether or not any prejudice has been

claimed.

Further examination of the witness ENO is required with respect to the admittedly false affidavit filed by him in this proceeding in which he swore that the IIPL answers and the answers of the plaintiffs RANDOLPH and MICHAEL FAGAN arrived in the same envelope. While this false affidavit was "corrected" at the "tail end" of the hearings the undersigned is entitled to establish precisely when ENO learned that the affidavit was false. If, in fact, it can be proven that ENO knew of the falsity of this affidavit, for example, on September 20th,1974 or at any time prior to the date of disclosure, the plaintiffs IIPL can claim that such failure to bring the matter to said plaintiffs' attention constitutes "other circumstances" that would make an award of attorneys' fees unjust or, in any event, it would serve to reduce the amount of attorneys' fees that the Court might award. Hence the Examination of ENO is material and necessary.

In addition the testimony of the witness ENO is at variance with the Judge's notes in connection with what was said at the September 20th hearing before the Court. ENO claims that no statement was made by the undersigned to the effect that SANDS was in his office on September 9th,1976. This conflicts with the Judge's notes indicating that such statement was made. Furthermore ENO's notes of what was allegedly said at the hearing on September 20th, 1974 were apparently made long after the hearing was concluded and based upon ENO's memory of what was said. An Examination of ENO is necessary to determine if any notes were made AT THE HEARING and, if so, why the undersigned was not informed that notes were being taken. Also, if notes were later transcribed, a duty may exist for ENO to have informed the undersigned of this fact. In any event all

of the facts and circumstances surrounding the taking of such notes by ENO should be explored.

The circumstances of the missing envelope in which the interrogatory answers of the IIPL were transmitted to the ROSENMAN COLIN firm must also be established. That envelopes are routinely saved is indicated by the photocopies of envelopes that are annexed to the TOUCHE ROSS and ENO moving papers. While the "small envelope" in which the answers of GARY MICHAEL and the plaintiffs MICHAEL FAGAN and MARTIN RANDOPLH was presented to the Court the large envelope was not. The undersigned is entitled to examine as to the circumstances surrounding the alleged "loss" of the large envelope.

Identification of the "temporary secretary" who worked for the ROSENMAN COLIN firm during the September period and who made various notations is necessary. There is a question as to the time when such notations were made and whether they were made simultaneously with the calls or later. Refusal to identify this party has been previously made and this is also a subject matter for examination.

Another area of examination involves the relationship between the District Judge and the ROSENMAN COLIN firm. Had even the present facts been known to the undersigned at the time of the assignment of this case to JudgeOwen the undersigned would have suggested recusal of the District Judge under 28 USC 455. The present facts, as now admitted, while suggesting recusal of the District Judge under 28 USC 455 are not, in the opinion of the undersigned, yet completely disclosed. Whether complete disclosure of these facts will permit the filing of an affidavit under 28 USC

144 is, at the present time, unknown but the undersigned is certainly entitled to examine the parties herein in order to obtain the facts. A party should not be kept in the dark as to material matters that might bear on the competency of a Judge to rule in a matter.

Also, as the undersigned reads the Rules of Conduct of attorneys, it was the duty of ENO to disclose his relationship with Judge Owen to the undersigned at the outset of the proceeding and not make a partial disclosure only after the facts became known to the undersigned only because of the fortuitous receipt of a telephone call from a party calling himself "Jack Le Clair". Any violation of the Rules of Conduct of attorneys on the part of ENO would again constitute "other circumstances" making an award of attorneys fees unjust in this case.

Defendant TOUCHE ROSS and the witness ENO claim that the proposed examination is "harassment" upon them. Despite the clear harassment of both my clients and myself by these parties I repeat to this Court that I have no intention of harassing either TOUCHE ROSS or ENO. (My conduct in connection with the other actions involving TOUCHE ROSS with the SHEA GOULD firm indicates clearly, I think, my opposition to any harassment.)Should the defendant TOUCHE ROSS and the witness ENO desire to have their depositions before a United States Magistrate (or a Special Master appointed by this Court, if the defendants will pay for the cost of such Special Master) the undersigned will have no objection. Indeed, the undersigned attempted to obtain the information in the most "painless" way. He proceeded first by letter, the information was refused. He proceeded then by Demand for Admissions, the Demand was objected to. It was only then that he proceeded by the normal discovery process. A more civilized way to obtain the information would be hard to find.

There are formal objections made to the manner in which the discovery in this case is being sought. The claimed irregularity in the service of the Notice of Taking Testimony has already been alluded to. Suffice it to say, in that connection, that upon the coming in of the Postal Report, it will be clearly shown that service of the Notice of Taking Testimony was in all respects proper. Indeed, in order to insure that the defendant TOUCHE ROSS attorneys would get the notice more than one mailing was made. Generally all objections to a Notice are waived unless promptly made (Rule 32(d)(1) FRCP. However, in order to insure that the technical questions are resolved, an Amended Notice has been served herewith. A copy of this Amended Notice is annexed to this Affidavit. Also, in order to insure that the Notice reaches the attorneys for TOUCHE ROSS, an additional copy has been mailed from New York in addition to the copy mailed from White Plains.

The defendant TOUCHE ROSS and the witness ENO object to the subpoena upon the ground that the items set forth in the subpoena have not been included in the Notice as required by Rule 30(b)(1) FRCP. While this has been corrected by the Amended Notice it is to be noted that the reason for the requirement is to permit a party to object to a subpoena served on a non-party witness since, unless this was done, the party receiving the notice would not know what documents are required from the witness and could not make timely objection thereto if he were so advised. Since ENO received the subpoena and is the attorney for TOUCHE ROSS he was well advised of what was required and, of course, made appropriate objection thereto. Hence the requirement involved was not material in this case under Rule 61FRCP.

Since timely objection has been made to the Subpoena by the witness ENO as required by the Rules the documents cannot be obtained except by Court Order. In this connection the plaintiffs have the obligation to show that the documents can be reasonably calculated to lead to the discovery of relevant and material evidence. Thus each item of the subpoena will be set forth with the relevance explained.

ITEM	RELEVANCE
1. Telephone logs from Sept. 5th, 1974 to date	To establish the authorization of TOUCHE ROSS for the Rule 37 application. To establish the authorization to incur legal expenses of claimed $18,000 on a simple Rule 37 application. To establish the authorization for making technical objections to the sufficiency of interrogatory answers. To establish the authorization to charge the attorney for IIPL with fraud.
2. Payroll and employment records from Sept. 5th, 1974 to date	To establish the identity of those partners or employees of the ROSENMAN COLIN firm who had charge of the envelopes received from BADER and BADER containing interrogatory answers To establish the identiy of the "temporary secretary" who made various telephone notations used as evidence before Judge Owen.
3. Minutes of meeting of the Judiciary Committee of the NY City Bar Association at which Judge Owen appeared for an interview.	This item relates to the pending letter application under 28 USC 455 requesting Judge Owen to recuse himself from this case. It also may give information which might support an application under 28 USC 144.
4. Tickets to the opera performance and the function at which you (ENO) met Judge Owen	See item "3" above.

TOUCHE ROSS and ENO further claim that the Notice of Taking Testimony and the Subpoena is improper because the action to which these items relate (constituent action 73 Civil 4133) has been "dismissed" by Judge Owen. If there were no further items open in this case the said parties might be correct. However a Rule 60(b) application based not only upon newly discovered evidence but upon failure on the part of the defendant TOUCHE ROSS or its attorney to set forth significant circumstances in connection with the relationship between LAWRENCE R. ENO and Judge Owen which (had this been known) would have resulted in a 28 USC 455 application and possibly, after discovery was had, a 28 USC 144 application to recuse the District Judge. Also, of course, there is still an application before Judge Owen for the fixation of attorneys' fees which application requires a hearing (as Judge Owen himself held in the DASA litigation). Thus 73 Civil 4133 is still open and plaintiffs IIPL etc. are entitled to examine on the issues involved herein.

Finally, if the presentation before Judge Owen is sufficient, in his opinion, to require recusal at this time, then, it is submitted, that this case should be forthwith assigned to another Judge for rulings on all matters which are open. In such event, also, it is submitted that recusal based upon evidence which was not revealed by the attorney for TOUCHE ROSS at the time of the original proceedings before Judge Owen, voids the original proceedings and requires consideration de novo of this entire matter before another Judge.

WHEREFORE the undersigned prays that this motion be determined as suggested in this Affirmation.

Dated : December 29th, 1976

I. Walton Bader

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et. al.

Plaintiffs

against

Civil Action
73 Civil 3929 VLB

TELEPROMPTER CORP. et. al.

Defendants

AMENDED NOTICE OF TAKING TESTIMONY

SIRS:

NOTICE IS HEREBY GIVEN that the deposition of the defendant TOUCHE ROSS & COMPANY, by its designated officers, directors or managing agents, pursuant to Rule 30(b)(6) FRCP, shall be taken at the office of the Clerk of the United States District Court, Southern District of New York, (Orders and Appeals Section) on a date to be set by this Court after determination of the Motion to Vacate Notice and Subpoena.

Pursuant to Rule 30(b)(6) FRCP the following matters are those upon which the defendant TOUCHE ROSS & COMPANY is to be examined, to wit: The authorizations given to the firm of ROSENMAN, COLIN, etc. to bring Rule 37 proceedings against the plaintiffs IIPL, etc. upon the alleged ground that proper answers to interrogatories in accordance with the Order of the District Court were not served in time.

NOTICE IS FURTHER GIVEN that the deposition of LAWRENCE R. ENO, will be taken as a witness at the office of the Clerk of the United States District Court for the Southern District of New York (Orders and Appeals Section) immediately upon the conclusion of the depositions of TOUCHE ROSS & COMPANY and the following documents books records and tangible things are to be produced by the said LAWRENCE R. ENO.

1. Telephone Logs from September 5th, 1974 to date.

2. Payroll and employment records from September 5th, 1974 to date.

3. Minutes of meeting of Judiciary Committee of NY City Bar Association at which Judge Owen appeared for interview.

4. Tickets to opera perforances and function at which you met Judge Owen.

Dated : December 28th, 1976

Yours, etc.

BADER and BADER
Attorneysfor Plaintiffs IIPL
65 Court Street
White Plains New York 10601

TO: ROSENMAN. COLIN, etc.
575 Madison Avenue
New York NY 10022

AFFIRMATION OF SERVICE

STATE OF NEW YORK
ss:
COUNTY OF WESTCHESTER

I. WALTON BADER, a member of the Bar of the State of New York, hereby certifies under penalties of perjury that on December 28th, 1976 he served a copy of the within Amended Notice of Taking Testimony upon Rosenman Colin, etc. by depositing the same in a mail box at Martine Avenue, White Plains New York.

Dated : December 28th, 1976

I. Walton Bader

919

SHEA GOULD CLIMENKO & CASEY

330 MADISON AVENUE

NEW YORK, NEW YORK 10017

AREA CODE 212
661-3200
CABLE ADDRESS
HOLMANG

LLIAM A. SHEA
TON S. GOULD
SSE CLIMENKO
BERT J. CASEY
UCE A. HECKER
WIN M. JONES
HES J. A. GALLAGHER
RNARD D. FISCHMAN
RNARD J. RUGGIERI
RTIN I. SHELTON
AN J. PARKER
PH L. ELLIS
ERT J. RUBEN
ORGE DE GENARO
NG JACOBSON
LDON D. CAMMY
UEL W. INGRAM, JR.
IN J. McDERMOTT
LIAM A. HAGAN, JR.
ER GETTINGER
IN A. CRAIG
HAEL LESCH
IN B. McGRATH
N P. GOLD
LIAM C. FINNERAN, JR.
CENT W. QUINN, JR.
AN R. TESSLER
ALD H. ALENSTEIN
MAN A. BURSKY
OLD S. JACOBS
MAS E. CONSTANCE
POSTEL
TER YASSKY
ERT W. CLAESON
L I. PAPERNIK

MILES F. McDONALD
SAUL S. STREIT
OF COUNSEL

EUROPEAN OFFICE
20 CHARLES STREET
LONDON W1X 7PB
01-491-3515
TELEX: 25836

GEORGE E. BOSS*
RESIDENT PARTNER
*NOT ADMITTED IN
NEW YORK

December 23, 1976

Walton Bader, Esq.
Bader & Bader
65 Court Street
White Plains, New York 10601

Re: Stern v. Zale

Dear Walton:

Pursuant to the agreement we made by telephone on December 22nd, I enclose a stipulation adjourning the time of defendant Touche Ross & Co. to move or answer with respect to the complaint in the above action to February 14, 1977.

And, pursuant to the authorization you gave me via telephone on December 22nd, I have signed your name to the stipulation which my clerk will file with the court. I have been advised that none of the named partners of defendant Touche Ross & Co. have been served and that only the company itself has been served. Therefore, I have made the stipulation relate solely to Touche Ross & Co.

Have a very pleasant holiday season and a very happy new year.

Very truly yours,

Leon P. Gold

Leon P. Gold

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ABRAHAM STERN, et al, Plaintiffs, -against- ZALE CORPORATION, et al, Defendants.	STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the parties indicated below that the time of defendant Touche Ross & Co. to move or answer with respect to the complaint be, and the same hereby is, adjourned to February 14, 1977.

Dated: New York, New York
December 23, 1976

Shea Gould Climenko & Casey
SHEA GOULD CLIMENKO & CASEY
Attorneys for Defendant
Touche Ross & Co.
330 Madison Avenue
New York, New York 10017

Bader & Bader by JPY
BADER & BADER
Attorneys for Plaintiffs
65 Court Street
White Plains, New York 10601

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et al., Plaintiffs,	
-against-	73 Civil 3929 (VLB)
	Referred to Hon. Richard Owen, U.S.D.J.
TELEPROMPTER CORP., et al., Defendants.	REPLY AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

GERALD WALPIN, being duly sworn, deposes and says:

I make this affidavit in reply to the opposing affirmation of I. Walton Bader, Esq. dated December 29, 1976.

Mr. Bader's affirmation confirms that the purpose of the proposed deposition is simply to harass Mr. Eno in retaliation for proceeding with this matter before Judge Owen and as part of the campaign of harassment that Mr. Bader has been carrying on in that connection since the filing of Touche Ross' post-hearing memorandum before Judge Owen.

The mala fides of the proposed deposition is immediately apparent from Mr. Bader's letter dated December 7, 1976 to Judge MacMahon (Exhibit 7 to Mr. Eno's affidavit of December 20, 1976). In that letter, Mr. Bader stated that he intended to proceed by deposition against Mr. Eno only because he had not answered the questions in Mr. Bader's letter dated November 5, 1976 regarding Judge Owen (Exhibit 3 to the aforesaid

affidavit.) It now appears from his affirmation that Mr. Bader seeks to examine on a large number of other matters.

Mr. Bader states that the deposition is sought in connection with the action of "Independent Investor Protective League et al. v. Teleprompter Corp. et al" (73 Civ. 4133). As noted in my affidavit of December 20, 1976 (p. 10), Mr. Bader may not conduct discovery in that action which has been dismissed as to Touche Ross with prejudice.

In his affirmation (p. 10), Mr. Bader says that ordinarily we "might be correct", but that he has pending an application pursuant to Fed. R. Civ. P. 60(b) and that 73 Civ. 4133 is "still open" because the amount of monetary sanctions has not yet been fixed by the Court. Neither of these circumstances entitles Mr. Bader to the discovery he seeks.

By order dated December 28, 1976, Mr. Bader's Rule 60 application has been denied in toto and any request for discovery based on that motion is now moot. In addition, that motion did not entitle Mr. Bader to discovery. The mere making of a Rule 60 application did not affect the order dismissing in its entirety 73 Civ. 4133 as to Touche Ross. That a party makes a Rule 60 application does not reopen the case for that party to conduct discovery. Likewise, such application does not entitle a party to conduct discovery to find out whether or not he can find something on which to predicate such application. The Rule 60 application was either sufficient or insufficient on the basis of the matter presented in the application -- and the Court has now determined that it was insufficient.

With respect to the fixing of the amount of the monetary sanctions, Mr. Bader asked for an evidentiary hearing in that connection. The Court has not directed that there be a hearing. Even if one were ordered, there is nothing that permits Mr. Bader to conduct discovery by deposition with respect to the monetary sanctions. See pp. 9-10, infra.

The vexatious nature of Mr. Bader's demands becomes even more evident on further analysis.

Mr. Bader seeks to conduct his deposition in three areas: (1) with respect to the hearings before Judge Owen that took place on November 4, 13 and 14, 1974, (2) with respect to the imposition of monetary sanctions and (3) with respect to Mr. Eno's alleged "relationship" with Judge Owen.

(1) With respect to the hearings before Judge Owen in November 1974

Mr. Bader says in his affirmation that he wants to conduct depositions on the following matters: (a) with respect to what he calls a "false" affidavit by Mr. Eno filed prior to those hearings; (b) with respect to a so-called "missing envelope"; (c) with respect to the argument before the Court on September 20, 1974 and Mr. Eno's notes of that argument; (d) with respect to a "temporary secretary" in our office; and (e) to find out whether there is a claim of "prejudice" from violation of the Court's order of August 16, 1974.

These items clearly show that Mr. Bader's purpose is simply to plague and to try to find fuel to continue his campaign of harassment.

(a) The claim relating to Mr. Eno's allegedly "false" affidavit is dealt with in Touche Ross' brief in the Court of Appeals (Exhibit F, p. 39, to my affidavit of December 20, 1976). The following is shown by Mr. Eno's testimony at the hearing (Tr. 212-213)*: In an affidavit dated September 16, 1974 submitted by Mr. Eno, an error was made. Mr. Eno was informed and believed that all of the purported answers to interrogatories had come in one envelope. He subsequently located one of the envelopes, which was too small to accommodate the answers of plaintiff Independent Investor Protective League ("IIPL"), and concluded that there had been two mailings. Mr. Eno voluntarily corrected this erroneous statement at the hearing and voluntarily produced the envelope that had been found.

The error played no part in the Court's decision and the Court found that there were two mailings, one containing the IIPL answers and the other containing the answers of the individual plaintiffs (see Exhibit E, pp. 3-4, to my affidavit of December 20, 1976).

Mr. Eno testified with respect to his affidavit on the hearing before Judge Owen (Tr. 212-213). Mr. Bader at that time had full opportunity to question Mr. Eno regarding his affidavit. The fact is that Mr. Bader did not address a single question to Mr. Eno on the subject. It was not until after we had

* A number preceded by the symbol "Tr." refers to a page in the transcript of the hearing before Judge Owen.

filed our post-hearing memorandum, in which the facts leading to the Court's decision were marshalled, that Mr. Bader seized upon that affidavit as a means of retaliating against Mr. Eno.

Mr. Bader now says that he wants to examine Mr. Eno to find out when he learned that his affidavit was in error, so that plaintiffs "can claim" that his failure sooner to acknowledge the error bears on the monetary sanctions to be imposed. Any such claim would be spurious on its face, particularly since the error played no part in the decision of the case. The plain purpose of the deposition is to harass.

(b) As noted above with respect to Mr. Eno's testimony, one envelope in which answers had come was found but not the other. The envelope found and voluntarily produced was the smaller envelope which obviously could not accommodate the IIPL answers -- indicating that there were two mailings (as the Court found). Mr. Bader now says that he wants to conduct depositions as to the circumstances regarding the loss of the one envelope -- and wants to examine all our employment and payroll records from September 5, 1974 to date to establish the identity of those who "had charge of the envelopes received from Bader and Bader containing interrogatory answers". The harrassing nature of the proposed deposition is self-evident. The irrelevance of Mr. Bader's claim in this connection is dealt with in Touche Ross' brief in the Court of Appeals (Exhibit F, pp. 39-40,

to my affidavit of December 20, 1976). Here, too, Mr. Bader had full opportunity to question Mr. Eno at the hearing before Judge Owen with respect to the envelope and asked not a single question. Mr. Bader's intention to harass is patent.

(c) Mr. Bader says that he wants to examine Mr. Eno regarding Mr. Eno's notes of the argument before the Court on September 20, 1974. Mr. Bader claims that Mr. Eno's notes conflict with the Court's notes. Exhibit F, p. 41, to my affidavit of December 20, 1976 shows that this is not the fact, but even if it were true, that furnishes no basis for conducting a deposition. Mr. Bader also says that: (1) Mr. Eno's notes were made "long after the hearing was concluded" and were based on Mr. Eno's memory and (2) if the notes were made at the hearing, Mr. Eno owed Mr. Bader some duty to inform him of that fact. This latter contention is too frivolous to warrant response. However, the facts as to his notes were clearly testified to by Mr. Eno at the hearing before Judge Owen. He there testified (Tr. 210): "I listened quite intently to what Mr. Bader said to your Honor, and promptly, after returning to my office that day, I dictated a memorandum of what he said." Mr. Bader had full opportunity at the hearing to ask Mr. Eno about his notes but did not do so. Here again, Mr. Bader's intention to harass is evident.

(d) At the hearing before Judge Owen, a telephone

log of calls to and from Mr. Eno on September 9, 1974 was marked in evidence. Mr. Eno testified fully with respect to that log, which showed a call from Mr. Bader at 10:37 A.M., and the notations thereon (Tr. 204-205). The only questions put to Mr. Eno by Mr. Bader about the log related to the handwriting on it and Mr. Bader stated that he had no objection to the admission of the log into evidence (Tr. 206). Mr. Bader had full opportunity to raise any questions about the log at the hearing. He did not do so. He addressed no questions to Mr. Eno about the substance of the log and did not at the hearing or in his subsequent affidavits deny making the 10:37 A.M. call (which call Mr. Eno testified he did not receive). Mr. Bader now says he wants to conduct depositions because the log was kept by a "temporary secretary" and "there is a question" as to when the notations were made. Mr. Bader knew at the hearings that the log was kept by a "temporary secretary" (Tr. 204). He sought to raise a question as to the authenticity of the log after the hearings closed and it was then demonstrated to the Court that no such question existed. Mr. Bader also says that he wants to examine all our payroll and employment records from September 5, 1974 to establish the "identity" of the "temporary secretary", and says that "Refusal to identify this party has been previously made and this is also a subject matter for examination". This is completely untrue. The name of the "temporary secretary" was given and, indeed, appears in an affirmation of Mr. Bader's dated February 10, 1975.

(e) Mr. Bader says that Touche Ross has shown no prejudice from the violation of the Court's order of August 16, 1974, and that since he has filed purported Powers of Attorney of plaintiffs nunc pro tunc, he wants to examine to find out whether any prejudice is claimed. This non sequitur is so transparently frivolous that on its face it demonstrates the lack of good faith. If Touche Ross has failed to show prejudice, Mr. Bader can make any contention on that basis that he wants.* He in fact did make such contention unsuccessfully before Judge Owen on the Rule 37 motion. No basis exists for conducting a deposition in that regard. Further, by its order of December 28, 1976, the Court found that those Powers of Attorney were meaningless documents and hence they cannot be cited as a basis for discovery.

It is apparent that what Mr. Bader is actually seeking to do is to reopen the hearing before Judge Owen, not on the ground of newly discovered evidence, but in order to conduct a general inquisition on matters covered at the hearing and on the basis of contentions made by Mr. Bader subsequent to the hearing which were baseless or irrelevant and which were rejected by the Court.

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* In his memorandum of law, Mr. Bader says that without a showing of prejudice, attorneys' fees cannot be awarded. This is not so. The cases he cites [Nanda v. Ford Motor Company, 509 F.2d 213 (7th Cir. 1974); United States v. 416.61 Acres of Land, 525 F.2d 450 (7th Cir. 1975); Sims Consolidated, Ltd. v. Irrigation & Pow. Equip., Inc., 518 F.2d 413 (10th Cir. 1975)] have nothing to do with the matter. Fed. R. Civ. P. 37(b) and (d) mandate an award of "reasonable expenses, including attorneys' fees" on the grant of a motion thereunder unless the Court finds that the defaulting party's failure was substantially justified or that other circumstances make an award of expenses unjust. See Exhibit F, p. 35, to my affidavit of December 20, 1976.

(2) With respect to the imposition of monetary sanctions

We have already noted that the pendency of proceedings to fix the amount of the reasonable expenses to be recovered by Touche Ross gives Mr. Bader no right to conduct depositions in that connection. If the Court believes a hearing is warranted, it can, of course, direct such hearing.* The papers that we have filed with respect to such proceeding show that such hearing is neither necessary nor appropriate in the circumstances of this case. It is for the Court to set the amount of the "reasonable expenses, including attorneys' fees" to be imposed. As noted in our affidavits filed in connection with those sanctions, the Court is aware of the nature of the services rendered with respect to which our affidavits were filed because the Rule 37 motion, and all subsequent proceedings to which those affidavits relate, took place before the Court. Mr. Bader knows from his personal participation the nature of the services that were performed, and our affidavits filed in such proceeding give further information. Mr. Bader is free to contend that the services rendered, as manifested in the papers and proceedings before the Court, were not reasonable or necessary, or that the fee paid by Touche Ross therefor was not reasonable. But there is no discovery in that connection to which he is entitled.

* While, if no hearing is directed, we are willing to limit the "reasonable expenses" to those incurred with respect to the matters leading to the order of January 9, 1976, if a hearing is directed we will establish that the "reasonable expenses" to which Touche Ross is entitled by reason of "failing to obey the order" [Fed. R. Civ. P. 37(b) and (d)] include all expenses incurred with respect to the order of January 9, 1976 prior to the hearing, as well as the expenses involved in the hearing itself.

Not only is Mr. Bader not entitled to conduct discovery in connection with the proceedings to fix "reasonable expenses", but the nature of the discovery sought by Mr. Bader in this connection also shows his lack of good faith. He says that because our firm and another firm representing Touche Ross in his view conduct "a different type of practice", it "might be possible" that we had no authorization from Touche Ross to bring on the Rule 37 motion. To find out whether there was such lack of authorization, Mr. Bader says he wants to examine all our "telephone logs" from September 5, 1974 to date. Such examination has no reasonable relationship to any question of authorization and on its face demonstrates Mr. Bader's purpose is to create annoyance. Mr. Bader has no reasonable basis to suppose that we had no authorization from Touche Ross. We had, and continue to have, full authorization from Touche Ross.

Mr. Bader also says that he wants to examine to "discover if the billing of the fees to Touche Ross was done in consideration of other services performed for Touche Ross for which no billing was made". The statement is virtually incomprehensible but what it does suggest is that Mr. Bader proposes to conduct discovery into our firm's billing of Touche Ross on matters unrelated to the matter before the Court. And this without the slightest predicate for such discovery. Nothing could better manifest that Mr. Bader's application is in bad faith for the purpose of harrassment.*

---

* We have already noted the irrelevance of the claim that Mr. Eno's erroneous (and corrected) affidavit can play any part on the question of the amount of monetary sanctions to be imposed.

(3) With respect to Mr. Eno's alleged "relationship" with Judge Owen

The nature and extent of Mr. Eno's acquaintanceship with Judge Owen is set forth in Mr. Eno's letter of November 2, 1976 to Mr. Bader, which is Exhibit 2 to, and part of, Mr. Eno's affidavit of December 20, 1976. Mr. Bader suggests that Judge Owen should by reason of the facts there set forth recuse himself pursuant to 28 U.S.C. §455, which recusal, says Mr. Bader, would "void the original proceedings."

Even if one could consider Mr. Bader's suggestion a proper application, it is shown in our accompanying memorandum of law that it is absurd to contend that the nature of Mr. Eno's acquaintanceship with Judge Owen furnishes any basis whatever for Judge Owen even to consider the question of recusal.

Mr. Bader knows this, for he then says that he also wants to conduct a general inquisition of our firm in relation to Judge Owen in the hope that he may be able to find something "which might support an application under 28 U.S.C. 144" to disqualify Judge Owen. Mr. Bader admits that he has no facts to support such application but wants discovery to see whether he can find any such facts. No right to conduct such an inquisition exists and it would be a travesty if unsuccessful litigants could do so in order to see if they could find something "which might support" some application to disqualify the Judge who decided against them.

We have fully demonstrated that none of the several matters with respect to which Mr. Bader says he wants to con-

duct his deposition lends the slightest support to his position. The Court is also entitled to view Mr. Bader's demand to conduct depositions in the context of this entire proceeding. So viewed, it is readily apparent that these most recent demands are not advanced for any legitimate purpose but are simply part of a campaign that Mr. Bader has conducted since the hearings before Judge Owen concluded in which, in an effort to divert attention from his own conduct, he has sought to defame those he considers responsible for the decision and order of January 9, 1976.

The authorities clearly support the denial of the depositions sought. 4 Moore, Federal Practice (2d ed) ¶26.69, p. 26-500; Balistrieri v. Holtzman, 52 F.R.D. 23 (E.D.Wis. 1971), citing Rosanna Knitted Sportswear, Inc. v. Lass O'Scotland, Ltd., 13 F.R.D. 325 (S.D.N.Y. 1952) (involving Mr. Bader); Lynch v. Henry Pollak, Inc., 1 F.R.D. 120 (S.D.N.Y. 1939).

We wish further to note the statement in Mr. Bader's affirmation of December 29, 1976 (pp. 3, 8) to the effect that there was a "third mailing" of the "Notice of Taking Testimony" dated December 14, 1976. We know from an inquiry we have received from the Postal Service that Mr. Bader is claiming that a copy of such notice was mailed to us on the morning of December 14, 1976 at Bronxville, New York in a drop box at the railroad station (cf. Fed. R. Civ. P. 45(d) that there must be proof of service of the notice to take a deposition before the clerk may issue a subpoena). No copy of that notice as allegedly so mailed was received

by us -- the only copies received by us being those described in my affidavit of December 20, 1976.

Gerald Walpin
GERALD WALPIN

Sworn to before me this
11th day of January, 1977.

Rose Aquglia
Notary Public

ROSE AQUGLIA
Notary Public, State of N. Y.
No. 24-5020230
Qualified in Kings Co.
Cert. Filed in New York County
Comm. Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, etc.

Plaintiffs

Civil Action
73 Civil 3929 VLB

against

[Assigned to Hon.
Richard Owen USDJ]

TELEPROMPTER CORPORATION, et. al.

Defendants

AFFIDAVIT OF G. DIXON MAHON

STATE OF TEXAS
ss:
COUNTY OF CROCKETT

G. DIXON MAHON, being duly sworn, deposes and says:

I am one of the plaintiffs in constituent action 73 Civil 4133 [by reason of my membership in the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE]. I am a member of the Bar of the State of Texas and the District Attorney of the City of Ozona Texas.

It has now been brought to my attention that HON. RICHARD OWEN, the District Judge presiding over constituent action 73 Civil 4133 was personally known to LAWRENCE R. ENO, the attorney for the defendant TOUCHE ROSS & COMPANY and that this was not communicated by him to my attorneys until the information was discovered otherwise.

I have been informed that the acquaintance between Judge Owen and LAWRENCE R. ENO is as follows:

1. That Judge Owen was interviewed by the Judiciary Committee of the Association of the Bar of the City of

New York with respect to his qualifications for the Federal Bench and that LAWRENCE R. ENO was a member of this Committee. The interview took place only a short time prior to the application made by Mr. Eno for Rule 37 sanctions against the plaintiffs in constituent action 73 Civil 4133. Judge Owen was appointed to the Federal Bench in December 1973 and the motion involved was made on September 20th, 1974.

2. That Judge Owen and LAWRENCE R. ENO met twice at the opera and once at a social function.

Based on my understanding of the Canons of Ethics these facts should have been revealed by Mr. Eno to my attorneys prior to the argument of the application involved before Judge Owen. I further believe that the above facts warrant the District Judge to recuse himself pursuant to 28 USC 455. Had these facts been known to me at the time of the making of the application involved I would have instructed my attorneys to request the District Judge to recuse himself in the matter.

G. Dixon Mahon

Sworn to before me
this 11th day of January 1977

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

HARRY LEWIS, etc.,

Plaintiffs,

-against-

TELEPROMPTER CORPORATION, et al.,

Defendants.
----------x

Civil Action
73 Civil 3929 VLB

[Assigned to Hon.
Richard Owen USDJ]

AFFIDAVIT OF MARTIN F. RANDOLPH, JR.

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) SS:

MARTIN F. RANDOLPH, JR., being duly sworn, deposes and says:

I am one of the plaintiffs in constituent action 73 Civil 4133 [by reason of my membership in the plaintiff INDEPENDENT INVESTOR PROTECTIVE LEAGUE].

It has now been brought to my attention that HON. RICHARD OWEN, the District Judge presiding over constituent action 73 Civil 4133 was personally known to LAWRENCE R. ENO, the attorney for the defendant TOUCHE ROSS & COMPANY and that this was not communicated by him to my attorneys until the information was discovered otherwise.

I have been informed that the acquaintance between Judge Owen and Lawrence R. Eno is as follows:

1. That Judge Owen was interviewed by the Judiciary Committee of the Association of the Bar of the City of New York

with respect to his qualifications for the Federal Bench and that LAWRENCE R. ENO was a member of this Committee. The interview took place only a short time prior to the application made by Mr. Eno for Rule 37 sanctions against the plaintiffs in constituent action 73 Civil 4133. Judge Owen was appointed to the Federal Bench in December of 1973 and the motion involved was made on September 20th, 1974.

2. That Judge Owen and LAWRENCE R. ENO met twice at the opera and once at a social function.

Had these facts been known to me at the time of the making of the application involved, I would have instructed my attorneys to request the District Judge to recuse himself in the matter.

Martin F. Randolph Jr.
Martin F. Randolph, Jr.

Sworn to before me this
day of January, 1977.

Susan Ann Bishop
Notary Public

OFFICIAL SEAL
SUSAN ANN BISHOP
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires June 9, 1980

JAN 14 1977
S. D. OF N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS, et al., Plaintiffs,	:	73 Civ. 3929 (VLB)
-against-	:	
TELEPROMPTER CORP., et al., Defendants.	:	STIPULATION AND ORDER
Consolidated Action	:	

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned counsel that the depositions enumerated in plaintiff's notice of depositions dated December 8, 1976 are adjourned to the following dates:

William J. Bresnan	February 17, 1977
Ralph F. Lewis	February 24, 1977
Raymond P. Shafer	March 3, 1977
Arthur J. Radin	March 10, 1977

Dated: New York, New York
January 11, 1977

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HALL DICKLER LAWLER KENT & HOWLEY

By_____
Attorneys for Defendant Hubert
J. Schlafly
460 Park Avenue
New York, New York 10022

MILBANK TWEED HADLEY & McCLOY

By_____
Attorneys for Defendants Puckett
and Richardson
One Chase Manhattan Plaza
New York, New York 10005

SO ORDERED:

_____
U.S.D.J.

U.S. DISTRICT COURT
FILED
MAR 7 1977
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

----------x

73 Civ.4133

MEMORANDUM AND ORDER

OWEN, District Judge

There are before me at this time three matters in this case -- (1) a "motion" to recuse; (2) a motion to vacate discovery notices in connection with the recusal motion; and (3) a determination with respect to the amount of attorneys' fees for services for the reasons set forth in my opinion of January 19, 1976.

The motion to recuse, not formally before me in motion papers, but nevertheless suggested by certain affidavits filed herein, based upon my acquaintance with Lawrence R. Eno, Esq. over the years, is frivolous and is denied. There is no necessity on the facts to require another district judge to pass on it.

Given the foregoing, the motion to vacate discovery notices obviously sought in support of the motion

MICROFILM
MAR 7 1977

to recuse is similarly denied.

On January 9, 1976, I directed the attorneys for Touche Ross to submit an affidavit bearing upon services rendered in connection with the proceeding before me as described in that opinion. That affidavit was furnished, opposing affidavits have been received and a reply affidavit has been submitted by Touche Ross. A threshhold question is whether an evidentiary hearing is required as demanded by I. Walton Bader. I conclude that an evidentiary hearing is not required. The entire court proceeding was before me and consisted of a hearing held over parts of several days. On that hearing, it was revealed how much the Rosenman firm had done before the problem surfaced to try to deal with it. The post-trial briefing was detailed and extensive. I am therefore personally aware of the services performed and in a position to determine from those observed services what preparation was involved. The affidavits show that a lot of high-quality work was done, as one would expect from the Rosenman firm. In the exercise of discretion, I conclude that an appropriate award of attorneys' fees herein is $7500. I further award the cost of the transcript herein and the witness fees, etc., totaling $574.38. There is no question but that the transcript was required

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in this matter in order that the Court might fully, fairly, and painstakingly consider all the issues which were of critical importance to both sides. The witness fees and mileage were similarly required for a witness whose proof shed valuable light upon the issues.

Submit order on notice.

March 4, 1977.

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
FILED
MAR 14 1977
S. D. OF N. Y.

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

73 Civ. 4133

AMENDED MEMORANDUM AND ORDER

OWEN, District Judge

The third paragraph of my Memorandum and Order of March 4, 1977 is amended to read as follows:

> Given the foregoing, the motion to vacate discovery notices obviously sought in support of the motion to recuse is therefore granted.

March 11, 1977.

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against-

73 Civ. 4133 (RO)

TELEPROMPTER CORP., et al.,

Defendants.

- -x

HARRY LEWIS, et al.,

Plaintiffs,

-against-

73 Civ. 3929 (VLB)

TELEPROMPTER CORP., et al.,

Defendants.

NOTICE OF SUBMISSION OF ORDER

- -x

PLEASE TAKE NOTICE that, pursuant to the Memorandum and Order dated March 4, 1977 and Amended Memorandum and Order dated March 11, 1977 of Hon. Richard Owen, U.S.D.J., the attached order will be submitted for signature to the Hon. Richard Owen, U.S.D.J., on March 30, 1977, at 10:00 A.M.

Dated: New York, New York
March 23, 1977

ROSENMAN COLIN FREUND LEWIS & COHEN

By _____
A Member of the Firm
Attorneys for defendant
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(212) 644-7000

TO:
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Attorney for plaintiffs
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New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against- 73 Civ. 4133(RO)

TELEPROMPTER CORP., et al.,

Defendants.

- -x

HARRY LEWIS, et al.,

Plaintiffs, 73 Civ. 3929(VLB)

-against-

ORDER

TELEPROMPTER CORP., et al.,

Defendants.

- -x

The order of consolidation dated November 18, 1974 having provided that said consolidation shall be without prejudice to any order that this Court might make in the action entitled "Independent Investor Protective League, et al., v. Teleprompter Corp., et al." (73 Civ. 4133) in proceedings in that action pending before this Court; and this Court by its order dated January 9, 1976 having granted the motion in the action of "Independent Investor Protective League, et al. v. Teleprompter Corp., et al." (73 Civ. 4133) of defendant Touche Ross & Co. pursuant to Fed. R. Civ. P. 37(b) and (d) and having directed that said entire action be dismissed as to defendant Touche Ross & Co. with prejudice, that plaintiff Independent Investor Protective League and its counsel, I. Walton Bader, Esq., pay to defendant Touche Ross & Co. its expenses, including attorneys' fees, incurred since September 6, 1974 by reason of the circum-

stances involved on said motion, and that affidavits be submitted with respect to such expenses, which affidavits have been submitted; and this Court, by its order dated December 28, 1976 having denied the motion of plaintiffs inter alia to dismiss the proceedings before this Court or to vacate said order dated January 9, 1976; and defendant Touche Ross & Co. and Lawrence R. Eno, Esq., having moved, pursuant to Fed. R. Civ. P. 26(c) and 45, to vacate a notice of deposition dated December 14, 1976 (amended under date of December 28, 1976) and to quash a subpoena duces tecum dated December 14, 1976; and said I. Walton Bader, Esq., having written a letter dated December 7, 1976 and having submitted affidavits of G. Dixon Mahon and Martin F. Randolph, Jr. dated January 11, 1977 and January [no date] 1977, respectively, that this Court recuse itself; and this Court having issued a Memorandum and Order dated March 4, 1977 and an Amended Memorandum and Order dated March 11, 1977, it is hereby

ORDERED that the aforesaid application that this Court recuse itself be and the same hereby is denied; and it is further

ORDERED that the aforesaid motion to vacate said notice of deposition and to quash said subpoena duces tecum be and the same hereby is granted; and it is further

ORDERED that the reasonable expenses of defendant Touche Ross & Co. pursuant to Fed. R. Civ. P. 37(b) and (d) be and the same hereby are fixed at $8,074.38, consisting of $7500.00 as attorneys' fees and $549.38 for cost of the

transcript and $25.00 for witness' fees; and it is further

ORDERED that plaintiff Independent Investor Protective League and I. Walton Bader, Esq. pay defendant Touche Ross & Co. the aforesaid sum of $8,074.38 within 30 days from the date of this order; and it is further

ORDERED that this Court has determined that there is no just reason for delay in entering final judgment pursuant to Fed. R. Civ. P. 54(b) dismissing the entire action of "Independent Investor Protective League, et al., v. Teleprompter Corp., et al." (73 Civ. 4133) as against defendant Touche Ross & Co. with prejudice and granting final judgment to defendant Touche Ross & Co. against plaintiff Independent Investor Protective League and I. Walton Bader, Esq. for said sum of $8,074.38 and against plaintiffs in said action for the remaining costs of said action, if any; and it is further

ORDERED that the Clerk of the Court enter final judgment that the entire action of "Independent Investor Protective League, et al. v. Teleprompter Corp., et al." (73 Civ. 4133) be dismissed as against defendant Touche Ross & Co. with prejudice, that plaintiffs in said action take nothing from defendant Touche Ross & Co., and that defendant Touche Ross & Co. recover of plaintiff Independent Investor Protective League and I. Walton Bader, Esq. the sum of $8,074.38 and recover of the plaintiffs in said action the remaining costs of said action, if any.

Dated: New York, New York
1977.

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APR 25 1977
S.D. OF N.Y.

HARRY LEWIS, et. al.,

Plainiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

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73 Civ. 3929 (VLB)

CONSOLIDATED ACTION

STIPULATION & ORDER EXTENDING TIME

IT IS HEREBY STIPULATED by and among the undersigned that the time of the parties to complete all discovery and inspection as provided in Pretrial Order No. 2 shall be, and the same hereby is, extended to June 6, 1977; and that the time for the parties to submit trial briefs and other written statements as required by Pretrial Order No. 2 herein shall be, and the same hereby is, extended to July 6,1977, and that this action shall be added to the reserve trial calendar on or after July 6, 1977.

Dated: New York, N.Y.
April 7, 1977

WOLF POPPER ROSS WOLF & JONES

By: Robert M. Kornreich

Lead Counsel for Plaintiffs
645 Third Avenue
New York, New York 10022

SHEA GOULD CLIMENKO & CASEY

By: [illegible]

Attorneys for Defendant
Teleprompter Corp.
330 Madison Avenue
New York, New York 10017

MICROFILM
APR 25 1977

ROSENMAN COLIN FREUND LEWIS & COHEN

By: _____

Attorneys for Defendant
Touche Ross & Co.
575 Madison Avenue
New York, New York 10022

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By: _____

Attorneys for Defendants Cooke, Bresnan, Wrather, Shafer, Lewis, Lowe, Livingston, Adams, Luckman, Mitchell and Simon
345 Park Avenue
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ANDERSON & GOLDMAN

By: _____

Attorneys for Defendant J.R. Barrington
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New York, New York 10017

HOLTZMAN, WISE & SHEPARD

By: _____

Attorneys for Defendant Marvin Carton
30 Broad Street
New York, New York 10004

KATZ, LEAVY, ROSENWEIG & SINDLE

By: _____

Attorneys for Defendant Leonard Tow
437 Madison Avenue
New York, New York 10022

HALL DICKLER LAWLER KENT & HOWLEY

By: _____

Attorneys for Defendant Hubert J. Schlafly
460 Park Avenue
New York, New York 10022

MILBANK, TWEED HADLEY & McCLOY

By: [illegible]

Attorneys for Defendants Puckett
and Richardson
One Chase Manhattan Plaza
New York, New York 10005

SO ORDERED: April 27, 1977

[illegible]
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
APR. 22 8 49 AM '77
S.D. OF N.Y.

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et. al.

Plaintiffs

against

Civil Action
73 Civil 4133 RO

TELEPROMPTER CORP., et. al.

Defendants

HARRY LEWIS, et. al.

Plaintiffs

against

Civil Action
73 Civil 3929 VLB

TELEPROMPTER CORP., et. al.

Defendants

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that INDEPENDENT INVESTOR PROTECTIVE LEAGUE, MARTIN F. RANDOLPH, Jr., GARY MICHAEL and MICHAEL FAGAN, the parties involved in the Order appealed from, and I.WALTON BADER, individually, hereby appeal from each and every part of an Order submitted to Hon. RICHARD OWEN, United States District Judge, on March 30th, 1977, said Order providing for a dismissal of the Complaint against the defendant TOUCHE ROSS & COMPANY, payment to the defendant TOUCHE ROSS & COMPANY by I.WALTON BADER and INDEPENDENT INVESTOR PROTECTIVE LEAGUE of the sum of $8,074.38, denying the application made to recuse Hon. Richard Owen from further consideration of this matter, and vacating a Notice of Deposition and Subpoena Duces tecum.

This appeal is also taken from any judgment entered or to be entered upon the aforesaid Order.

Dated : April 20th, 1977

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
INDEPENDENT INVESTOR PROTECTIVE LEAGUE, MARTIN F. RANDOLPH and MICHAEL FAGAN

BADER and BADER
Attorneys for GARY MICHAEL

BADER and BADER
Attorneys for I.WALTON BADER
Office & Post Office Address
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Attorneys for defendants COOKE, BRESNAN, WRATHER, SHAFER, LEWIS, LOWE, LIVINGSTON, ADAMS, LUCKMAN, MITCHELL & SIMON
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MILBANK, TWEED, HADLEY & McCLOY, Esqs.
Attorneys for Defendants PUCKETT and
RICHARDSON
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New York, N.Y. 10005

Owen, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
FILED
MAY 9 1977
S. D. OF N. Y.

File

- - - - - - - - - - - - - - - - - - - -x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against-

73 Civ. 4133(RO)

TELEPROMPTER CORP., et al.,

Defendants.

- -x

HARRY LEWIS, et al.,

Plaintiffs,

73 Civ. 3929(VLB)

-against-

ORDER

TELEPROMPTER CORP., et al.,

Defendants.

- -x

MICROFILM
MAY 9 1977

MICROFILM

The order of consolidation dated November 18, 1974 having provided that said consolidation shall be without prejudice to any order that this Court might make in the action entitled "Independent Investor Protective League, et al., v. Teleprompter Corp., et al." (73 Civ. 4133) in proceedings in that action pending before this Court; and this Court by its order dated January 9, 1976 having granted the motion in the action of "Independent Investor Protective League, et al. v. Teleprompter Corp., et al." (73 Civ. 4133) of defendant Touche Ross & Co. pursuant to Fed. R. Civ. P. 37(b) and (d) and having directed that said entire action be dismissed as to defendant Touche Ross & Co. with prejudice, that plaintiff Independent Investor Protective League and its counsel, I. Walton Bader, Esq., pay to defendant Touche Ross & Co. its expenses, including attorneys' fees, incurred since September 6, 1974 by reason of the circum-

stances involved on said motion, and that affidavits be submitted with respect to such expenses, which affidavits have been submitted; and this Court, by its order dated December 28, 1976 having denied the motion of plaintiffs inter alia to dismiss the proceedings before this Court or to vacate said order dated January 9, 1976; and defendant Touche Ross & Co. and Lawrence R. Eno, Esq., having moved, pursuant to Fed. R. Civ. P. 26(c) and 45, to vacate a notice of deposition dated December 14, 1976 (amended under date of December 28, 1976) and to quash a subpoena duces tecum dated December 14, 1976; and said I. Walton Bader, Esq., having written a letter dated December 7, 1976 and having submitted affidavits of G. Dixon Mahon and Martin F. Randolph, Jr. dated January 11, 1977 and January [no date] 1977, respectively, that this Court recuse itself; and this Court having issued a Memorandum and Order dated March 4, 1977 and an Amended Memorandum and Order dated March 11, 1977, it is hereby

ORDERED that the aforesaid application that this Court recuse itself be and the same hereby is denied; and it is further

ORDERED that the aforesaid motion to vacate said notice of deposition and to quash said subpoena duces tecum be and the same hereby is granted; and it is further

ORDERED that the reasonable expenses of defendant Touche Ross & Co. pursuant to Fed. R. Civ. P. 37(b) and (d) be and the same hereby are fixed at $8,074.38, consisting of $7500.00 as attorneys' fees and $549.38 for cost of the

transcript and $25.00 for witness' fees; and it is further

ORDERED that plaintiff Independent Investor Protective League and I. Walton Bader, Esq. pay defendant Touche Ross & Co. the aforesaid sum of $8,074.38 within 30 days from the date of this order; and it is further

ORDERED that this Court has determined that there is no just reason for delay in entering final judgment pursuant to Fed. R. Civ. P. 54(b) dismissing the entire action of "Independent Investor Protective League, et al., v. Teleprompter Corp., et al." (73 Civ. 4133) as against defendant Touche Ross & Co. with prejudice and granting final judgment to defendant Touche Ross & Co. against plaintiff Independent Investor Protective League and I. Walton Bader, Esq. for said sum of $8,074.38 and against plaintiffs in said action for the remaining costs of said action, if any; and it is further

ORDERED that the Clerk of the Court enter final judgment that the entire action of "Independent Investor Protective League, et al. v. Teleprompter Corp., et al." (73 Civ. 4133) be dismissed as against defendant Touche Ross & Co. with prejudice, that plaintiffs in said action take nothing from defendant Touche Ross & Co., and that defendant Touche Ross & Co. recover of plaintiff Independent Investor Protective League and I. Walton Bader, Esq. the sum of $8,074.38 and recover of the plaintiffs in said action the remaining costs of said action, if any. 3929 Compared 5/9/77

This order has no effect whatsoever on 73 Civ. ~~4133~~, the existing class action.

Dated: New York, New York
~~March 30~~, May 6 1977.

United States District Judge

JUDGMENT ENTERED - 5/11/77
is approved
Berry Lovett
CLERK

959

FILED

MAY 12 4 54 PM '77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et. al.

Plaintiffs

against

TELEPROMPTER CORP. et. al.

Defendants

Civil Action
73 Civil 4133RO

HARRY LEWIS, et. al.

Plaintiffs

against

TELEPROMPTER CORP. et. al.

Defendants

~~Civil Action~~
~~73-Civil 3929VLB~~

AMENDED NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Notice of Appeal filed herein, dated April 20th, 1977 is hereby ~~amended~~ to appeal from each and every part of an Order made by Hon. Richard Owen, United States District Judge on May 6 1977 and entered on a judgment in the office of the Clerk of the United States District Court for the Southern District of New York on May 11th 1977.

The said original Notice of Appeal is in all other respect in full force and effect.

Dated : May 12th, 1977

TO: CLERK, USCA
ROSENMAN, COLIN, FREUND, LEWIS & COHEN
575 MADISON AVE.
NY NY 10022

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73 Civil 4133
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WRATHER, SHAFER, LEWIS, LOWE, LIVINGSTON, ADAMS,
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Attorneys for Defendants PUCKETT and
RICHARDSON
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New York, N.Y. 10005

Notice

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

Civil Action
73 Civil 4133RO

File in ↑

----------x

HARRY LEWIS, et al.,

Plaintiffs,

-against-

TELEPROMPTER CORP., et al.,

Defendants.

Civil Action
73 Civil 3929VLB

MAY 9 35 AM '77
FILED
U.S. DISTRICT COURT
S.D. N.Y.

----------x

AMENDED NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Notice of Appeal filed herein, dated April 20, 1977 is hereby amended to appeal from each and every part of an Order made by Hon Richard Owen, United States District Judge, on May 6, 1977 and entered as a Judgment in the Office of the Clerk of the United States District Court for the Southern District of New York on May 11, 1977.

The said original Notice of Appeal is in all other respects in full force and effect.

Dated: May 12, 1977

I. Walton Bader
BADER and BADER
Attorney for Plaintiffs
in 73 Civil 4133
270 Madison Avenue
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(212) 532-6860

TO: WOLF, POPPER, ROSS, WOLF & JONES
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Attorneys for defendants PUCKETT and RICHARDSON
One Chase Manhattan Plaza
New York, New York 10005

MAY 27 2 58 PM '77
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARRY LEWIS

Plaintiff

against

Civil Action
73 Civil 3929 VLB

TELEPROMPTER CORP., et. al:

Defendants

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that INDEPENDENT INVESTOR PROTECTIVE LEAGUE, MARTIN F. RANDOLPH, JR., GARY MICHAEL, MICHAEL FAGAN and I. WALTON BADER hereby appeal to the United States Court of Appeals for the Second Circuit from each and every part of an Order made by Hon. Richard Owen, one of the United States District Judges for the Southern District of New York, dated May 9th, 1977 and entered, as a judgment against INDEPENDENT INVESTOR PROTECTIVE LEAGUE and I.WALTON BADER on May 11th, 1977 in the office of the Clerk of the United States District Court for the Southern District of New York (in constituent action 73 Civil 4133), said Order dismissing the Complaint herein in constituent action 73 Civil 4133 against the defendant TOUCHE ROSS & CO. with prejudice and awarding attorneys' fees against the Appellants INDEPENDENT INVESTOR PROTECTIVE LEAGUE and I.WALTON BADER of $8,074.38 and this appeal is taken from the above Order, Judgment and each and every part thereof.

Dated : May 27th, 1977

Yours, etc.

TO: CLERK UNTIED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

I.Walton Bader
BADER & BADER
Attorneys for Appellants
65 Court Street
White Plains N.Y. 10601

ATTORNEYS TO BE SERVED BY THE CLERK

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460 Park Avenue
New York NY 10022

MILBANK, TWEED, HADLEY & McCLOY, Esqs.
One Chase Manhattan Plaza
New York NY 10005

5.00 pd

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Independent Investor Protective League, et al
Plaintiffs
vs.
Teleprompter Corp., et al.

Action Number
73 Civ. 4133
RO

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Notice is hereby given that Independent Investor Protective League Martin F. Randolph Jr. Gary Michael Michael Fagan and I. Walton Bader above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order and Judgment dated May 4 1977 and docketed on May 11 1977 said Order dismissing the complaint against defendant Touche Ross & Co. and awarding attorneys' fees against IIPL & I Walton Bader of $4,074.38

Signed
Attorney for IIPL Randolph I. Walton Bader Michael Bader & Bader & Fagan
65 Court Street
Address
White Plains NY 10601

Notice to: Rosenman, Colin, etc
575 Madison Ave
New York NY 10022

* Insert whether order or final judgment or part thereof appealed from.

1 copy, Vols. I & II, receiv-
ed.

Rosenman Colin et al

ROSENMAN, COLIN, FREUND, LEWI!
& COHEN

by D. Sussor
8 Aug 1977
2:55 p.m.